

IN THE MATTER OF THE CLAIM
OF JOANN LEE,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF EDWIN CERRITOS
RODRIGUEZ, T/A ADONAY
CONSTRUCTION, LLC,
RESPONDENT

* BEFORE BRIAN ZLOTNICK,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: LABOR-HIC-02-24-11045
* MHIC No.: 24 (75) 4
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PROPOSED DECISION

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STATEMENT OF THE CASE

On November 28, 2023, Joann Lee (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of 8,533.00² for actual losses allegedly sustained as a result of a home improvement contract with Edwin Cerritos Rodriguez, trading as Adonay Construction, LLC (Respondent). Md. Code Ann.,

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

² At the hearing, the Claimant modified her claim to \$3,000.00.

Bus. Reg. §§ 8-401 to 411 (2024).³ On April 15, 2024, the MHIC issued a Hearing Order on the Claim. On April 15, 2024, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On September 3, 2024, I held a hearing at the OAH in Hunt Valley, Maryland. At the outset of that hearing it was discovered that the OAH Notice of Hearing (Notice) was mailed to an incorrect address for the Respondent. I continued the hearing to allow the OAH to issue a corrected Notice to the Respondent's address of record. On December 16, 2024, I held the rescheduled hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Hilary Baker, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. The Respondent was self-represented.⁴

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); Code of Maryland Regulations (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?

³ Unless otherwise noted, all references to sections of the Business Regulation Article are to the 2024 Volume of the Maryland Annotated Code.

⁴ A Spanish interpreter was present for the hearing to provide interpreting services for the Respondent.

SUMMARY OF THE EVIDENCE

Exhibits

The Claimant offered the following exhibits, which I admitted into evidence:

- Clmt. Ex. 1 - Contract, May 19, 2021
- Clmt. Ex. 2 - Revised Contract, June 3, 2021
- Clmt. Ex. 3 - Photograph of shower floor and wall, taken in August or September 2023
- Clmt. Ex. 4 - Photograph of first floor ceiling, taken in July or August 2023
- Clmt. Ex. 5 - Photograph of first floor kitchen ceiling, taken in July or August 2023
- Clmt. Ex. 6 - Photograph of first floor dining room ceiling, taken in July or August 2023
- Clmt. Ex. 7 - Estimate from Hero Restoration, October 25, 2023

The Respondent did not offer any exhibits into evidence.

The Fund offered the following exhibits, which I admitted into evidence:

- Fund Ex. 1 - OAH Notice of Hearing, May 28, 2024
- Fund Ex. 1A - OAH Notice of Rescheduled Hearing, September 26, 2024
- Fund Ex. 2 - Hearing Order, April 15, 2024
- Fund Ex. 3 - Respondent's MHIC Licensing Record, August 14, 2024
- Fund Ex. 4 - Letter from the MHIC to the Respondent, December 18, 2023, with attached Claim Form

Testimony

The Claimant testified and did not present other witnesses.

The Respondent testified and did not present other witnesses.

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 numbers 01-114209 (individual) and 05-134864 (corporate).
2. On May 19, 2021, the Claimant and the Respondent entered into a contract to remodel the Claimant's bathroom (Contract). The Contract specified the following:

- Remove old tub, toilet, sink, and floor
- Convert tub into a walk-in shower
- Install new plumbing and new faucet
- Install a new exhaust fan, sink, and medicine cabinet
- Install new tile, floor, and shower walls
- Paint ceiling and walls
- Install hardware sets
- Install a new glass shower door
- Install a new door

3. The Respondent and the Claimant verbally agreed to include the installation of a bench inside the shower as part of the Contract.

4. The original agreed-upon Contract price was \$9,000.00.

5. The Contract stated that work would begin on June 2, 2021, and would be completed by July 2, 2021. (Clmt. Ex. 1).

6. The Claimant made the following cash payments to the Respondent:

- \$3,000.00 on May 18, 2021
- \$3,000.00 on June 3, 2021
- \$2,000.00 on June 18, 2021
- \$1,000.00 on June 21, 2021

Total payments - \$9,000.00. (Clmt. Ex. 2).

7. The Respondent completed all work on the Contract in 2021.

8. In March 2023, the Claimant noticed black mold on the shower floor and a water leak through the first-floor ceiling below the renovated bathroom. The Claimant sent a letter to the Respondent requesting him to address these issues. (Test. of Claimant and Clmt. Exs. 4, 5, & 6).

9. The Respondent's son came to the Claimant's home in June or July 2023 to address the shower pan mold and the leak from the shower through the first-floor ceiling. He offered to apply caulk over the mold but this option was declined by the Claimant. The

Respondent's son told the Claimant that he would get the Respondent's plumber to address the Claimant's concerns regarding the mold and the bathroom leak. (Test. of Claimant).

10. The Respondent's plumber inspected the Claimant's shower several days after the Respondent's son's visit and found that water was seeping between the shower pan and the shower bench through the shower floor to the first-floor ceiling. The plumber also found that the water between the shower pan and the bench resulted in the formation of black mold in the shower. (Test. of Claimant).

11. In August 2023, the Respondent inspected the Claimant's shower and agreed to have his plumber come back to replace the shower pan with a tiled shower floor and he also found that the shower bench would have to be permanently removed. A day or two later, the plumber removed the shower bench, shower pan and two rows of tiles on the shower walls where the bench was located. The plumber installed new wall tile for the rows that were removed and installed tile on the shower floor in place of the shower pan. The Respondent did not show the Claimant the replacement tile he used before it was installed. The Respondent did not replace the shower bench. (Test. of Claimant and Respondent).

12. The wall tiles the Respondent used to replace the shower wall tiles had a blue tint which did not match the remaining shower wall tiles. The shower floor tiles the Respondent installed contained octagon shaped pattern which was different from the wall tile pattern. (Test. of Claimant and Clmt. Ex. 3).

13. The glass shower doors do not close properly, leaving a gap. After the Respondent's plumber completed his repairs to the shower the Claimant advised the Respondent of the shower door issue. The Respondent did not repair the shower door. (Test. of Claimant and Respondent).

14. After the Respondent's plumber completed his repairs to the shower, it continued to leak a puddle of water onto the bedroom closet floor adjacent to the bathroom after each use of the shower. (Test. of Claimant).

15. On October 25, 2023, the Claimant obtained an estimate from Hero Restoration to remove and replace the bathroom shower and shower doors at a cost of \$2,500.00. (Clmt. Ex. 7).

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); *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."). The term "'actual loss' means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Bus. Reg. § 8-401. 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); COMAR 09.08.03.03B(1). 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). The Claimant resides in the home that is the subject of the claim and does not own more than three dwellings. *Id.* § 8-405(f)(2). The parties did not enter into a valid agreement to submit their disputes to arbitration. *Id.* §§ 8-405(c), 8-408(b)(3). 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).

The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. The Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. Bus. Reg. § 8-405(d). The Claimant contacted the Respondent in March 2023 to report the black mold and water leaking issues with the shower. The Respondent replied by initially sending his son to address these issues. The Claimant reasonably rejected the Respondent's son's proposal to caulk over the mold in the shower to remediate the mold and water leakage. The Respondent then sent his plumber to address the Claimant's issues which resulted in the removal of the shower bench and the installation of tile on the shower floor in place of the shower pan. Further, the Respondent's plumber removed the lowest two rows of tile from the shower walls and replaced it with new tile. The Respondent's efforts to fix the shower resulted in mismatched tile and the removal of the shower bench without replacement. Further, the shower continued to leak after each use following the Respondent's repairs in 2023, providing further evidence of the Respondent's incompetence. At that point it was reasonable for the Claimant to find another contractor to address the problem and have no further contact with the Respondent.

The evidence establishes that the Respondent performed unworkmanlike and inadequate home improvements. The shower that the Respondent installed started leaking within two years

after the completion of the Contract and continued leaking after each use following the Respondent's repairs in 2023. The Claimant presented photographs taken in July or August of 2023 that showed ceiling water stains from the leaking shower above and testified regarding the continuing leaking of water from the shower into an adjacent bedroom closet after each use. The Respondent neither presented evidence nor insinuated that the leak resulted from an alternate source. The evidence shows that the new shower was the source of the leaks.

The Respondent argued that the leaks were the result of the Claimant dropping a heavy object on the shower pan and he testified that he observed a crack on the shower pan when he inspected it in 2023. The Claimant denied dropping a heavy object on the shower pan, but even if this had occurred, the shower continued leaking after the Respondent removed the shower pan and replaced it with a tile floor. I do not find credible the Respondent's assertion that any leaks were the fault of the Claimant dropping a heavy object on the shower pan, as there is no evidence to support his allegation. Therefore, I find that the evidence established that the Respondent performed unworkmanlike and inadequate home improvements.

Additionally, the Respondent, in his repair of the shower, replaced the bottom two rows of tile from the shower walls with a different color tile that failed to match the remaining shower wall tiles. The Respondent admitted that he purchased the tile without consulting with the Claimant and that he tried to find the closest matching tile he could. The Claimant, however, countered that she was able to find the exact matching wall tile at the Home Depot. The Respondent's failure to find matching tile, or at the very least consult with the Claimant regarding the replacement wall tile, resulted in a mismatched tile appearance.

In summary, the Respondent's arguments are unavailing. The evidence establishes that the leaks in the Claimant's home came from the shower pan and that the shower continues to

leak after the Respondent's repairs and replacement of the shower. Finally, the Respondent admitted that the glass shower door he installed do not close properly, yet he failed to fix this issue after acknowledging the defect with the Claimant during his inspection in 2023. I find that the Respondent installed the shower and repaired it incorrectly using inadequate methods and poor workmanship. 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. In the Claim, the Claimant requested reimbursement of \$8,533.00. At the hearing, the Claimant reduced the amount of her claim to \$3,000.00, arguing that she should recover the \$2,500.00 Hero Restoration estimated as the cost to remove and replace the Claimant's shower, and an additional \$500.00 to account for inflation -as Hero Restoration's estimate was more than a year old. I reject the Claimant's inflation argument as the regulations only allow for consideration of the amount paid or the amount of a contract that was solicited for remediation of the Contract. COMAR 09.08.03.03B. Therefore, I am only considering the \$2,500.00 estimate from Hero Restoration in my calculations for the Claimant's actual loss.

The MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work. In this case, the Respondent performed work under the Contract, and the Claimant has retained another contractor to 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).

The calculations are as follows:

\$9,000.00 paid to the Respondent; plus
+\$2,500.00 estimate from Hero Restoration; equals
\$11,500.00 minus the contract price;
-\$9,000.00 equals
\$2,500.00 actual loss.

The Business Regulation Article caps a claimant's recovery at \$30,000.00 for acts or omissions of one contractor and provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed.⁵ Bus. Reg. § 8-405(e)(1), (5); 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 her actual loss of \$2,500.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$2,500.00 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)(c). I further conclude that the Claimant is entitled to recover that amount from the Fund.

⁵ 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 \$2,500.00; 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;⁶ and

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

March 6, 2025
Date Decision Issued

Brian Zlotnick
Brian Zlotnick
Administrative Law Judge

⁶ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 8th 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.

Wm. Bruce

Quackenbush

Wm. Bruce Quackenbush

Chairman

Panel B

*MARYLAND HOME IMPROVEMENT
COMMISSION*