

IN THE MATTER OF THE CLAIM	* BEFORE CARLTON A. CURRY,
OF SHARON MCCOLLOUGH,	* 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 BERNARD JONES,	*
T/A ELEVATIONS GROUP, LLC,	* OAH No.: LABOR-HIC-02-24-13738
RESPONDENT	* MHIC No.: 24 (75) 501

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On February 20, 2024, Sharon McCollough (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$138,403.33 for actual losses allegedly suffered as a result of a home improvement contract with Bernard Jones, trading as Elevations Group, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2024).² On May 15, 2024, the MHIC issued a Hearing Order on the Claim.

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 2024 Volume of the Maryland Annotated Code.

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

On June 13, 2024, the OAH issued a Notice of Hearing (Notice), scheduling a hearing for September 25, 2024, in person at the OAH offices in Hunt Valley, Maryland. On June 21, 2024, the Claimant filed a request for a remote hearing, which I granted on July 23, 2024. On September 9, 2024, the OAH provided a Notice of Remote Hearing (Second Notice) to the Respondent by certified mail and first-class mail. Bus. Reg §§ 8-312(d), 8-407(a) (2024); Code of Maryland Regulations (COMAR) 28.02.01.05C(1).

On September 25, 2024, I held a hearing via the Webex videoconferencing platform. Bus. Reg. §§ 8-407(a), 8-312; COMAR 28.02.01.20B(1)(b). Eric London, Assistant Attorney General, Department, represented the Fund. Thomas J. Schetelich, Esquire and Jocelyn Szymanowski, Esquire, represented the Claimant, who was present.

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. The Second Notice stated that a hearing was scheduled for September 25, 2024, at 9:30 a.m., via Webex and provided the meeting number. COMAR 09.08.03.03A(2). The Second 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. 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. 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 - Contract between the Claimant and the Respondent, dated October 7, 2020
- Clmt. Ex. 2 - Not offered³
- Clmt. Ex. 3 - Scope of work of contract between the Claimant and the Respondent, dated October 6, 2020
- Clmt. Ex. 4 - Collection of pictures of project framing, dated January 28, 2021 through February 3, 2021
- Clmt. Ex. 5 - Email correspondence between the Claimant and a representative of MECU Credit Union (MECU), dated September 8, 2021 through March 18, 2022 and copies of official checks:
 - Check No. 7694203 in the amount of \$11,003.34, dated September 8, 2021
 - Check No. 7709790 in the amount of \$24,249.00, dated March 18, 2022
 - Check No. 7671471 in the amount of \$38,140.22, dated December 24, 2020
 - Check No. 7677541 in the amount of \$37,732.79, dated May 10, 2021
 - Check No. 7684068 in the amount of \$29,453.41, dated May 21, 2021

³ Documents identified, but not offered into evidence are maintained with the file for completion of the record. COMAR 28.02.01.22E.

Clmt. Ex. 6 - Text message screenshots between the Claimant and the Respondent, dated April 21, 2022 and December 28, 2024

Clmt. Ex. 7 - Collection of undated photographs, including:

- Photographs of second floor apartment, prior to fire, 1-6
- Photographs of first floor salon, prior to fire, 7-11
- Apartment fire damage, 12-13
- Renovation progress, 14-47

Clmt. Ex. 8 - Burrell's Home Improvement Estimate, dated June 24, 2024

Clmt. Ex. 9 - R Hooks Home Improvement Estimate, dated February 16, 2024

Clmt. Ex. 10 - Invoice No. 0054 from JDL Mechanical, LLC, dated February 21, 2022 and emails between the Claimant and MECU representative concerning payments, March 8, 2021 through May 21, 2021

Clmt. Ex. 11 - Estimate from N.J.B. Electric Co. dated January 7, 2021 and emails between the Claimant and MECU representative concerning payments, dated March 8 and 9, 2021

Clmt. Ex. 12 - Collection of emails the Claimant and MECU representative concerning payments, dated February 26, 2021 through September 8, 2021

Clmt. Ex. 13 - Screenshot of text messages between the Claimant and the Respondent, dated September 29, 2023 through October 20, 2023

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Correspondence converting hearing to a remote proceeding, dated July 23, 2024

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

Fund Ex. 3 - MHIC certified licensing history the Respondent, dated August 8, 2024

Fund Ex. 4 - MHIC Home Improvement Claim Form, received February 20, 2024

Fund Ex. 5 - Correspondence from the MHIC to the Respondent, with the Claim attached, dated February 20, 2024

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

Testimony

The Claimant testified and presented Rudolph Hooks and Donnell Burrell, licensed contractors, whom I accepted as experts in home improvement contracting.

The Respondent did not appear, and therefore, did not present any 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 number 01-81760 and as a salesperson under MHIC license number 05-135775.
2. The Claimant owns a property on Phelps Lane, Baltimore, Maryland (property) through her company, Sky, Inc.⁴ The Claimant is the owner of all shares of Sky, Inc., and is its director.
3. Sky, Inc. does not own more than three residences or dwellings.
4. The property is a mixed-use property, with a hair salon on the first floor, and a residential apartment on the second floor.
5. In September 2019, the property was damaged due to fire on the second floor. The first floor of the property sustained water damage.
6. On October 7, 2020, the Claimant and the Respondent entered into a contract to perform a comprehensive renovation to the entire property. The scope of the project included fully renovating the second floor apartment and the first floor salon, including the installation of electrical, plumbing, two HVAC⁵ units, drywall and flooring (Contract). (Clmt. Exs. 1, 3).

⁴ For purposes of confidentiality, the full address is not included.

⁵ Heating, Ventilation, Air Conditioning

7. The original agreed-upon Contract price was \$106,427.10.
8. The funds for the renovation under the Contract were provided by Nationwide, the property's insurer and disbursed by MECU through official checks. Each official check was made to Claimant⁶ and to the Respondent.
9. The Claimant gave the official checks to the Respondent for work under the Contract.
10. The Claimant paid the Respondent \$140,578.76,⁷ with official checks, as follows:
- Check No. 7671471 in the amount of \$38,140.22, dated December 24, 2020
 - Check No. 7677541 in the amount of \$37,732.79, dated May 10, 2021
 - Check No. 7684068 in the amount of \$29,453.41, dated May 21, 2021
 - Check No. 7694203 in the amount of \$11,003.34, dated September 8, 2021
 - Check No. 7709790 in the amount of \$24,249.00, dated March 18, 2022
11. The Claimant made requests for funds by sending an email to a MECU representative, who identified the reason for four of the five disbursements.
12. Check No. 7677541 in the amount of \$37,732.79, was issued for "the electrical invoice/proposal from a sub-contractor (N.J.B. Electric Co. \$33,250.00 and \$4,482.79 for mitigation estimate." (Clmt. Ex. 11, pg. 3).
13. Check No. 7684068 in the amount of \$29,453.41, was issued for "mechanical invoice/proposal from a sub-contractor (JDL Mechanical LLC) \$19,951.00 and \$9,501.41 for framing estimate." (Clmt. 10, pg. 2).
14. Check No. 7694203 in the amount of \$11,003.34, was issued for "hanging drywall, walls & ceiling installation, and windows." (Clmt. Ex. 5, pg. 1).
15. Check No. 7709790 in the amount of \$24,249.00, was issued for "kitchen cabinets, appliances, and bathroom amenities." (Clmt. 5, pg. 3).

⁶ The payee was Sky Inc., a corporation owned and controlled by the Claimant.

⁷ The Claimant's Home Improvement Claim Form identifies total payments to the Respondent as \$138,403.33. (Fund Ex. 2). During the hearing, the Claimant did not explain her calculations.

16. The Respondent performed some of the scope of work of the Contract. The Respondent installed some framing and performed some electrical work, including installing outlet, switches, and lighting. The Respondent also removed, replaced, finished and painted dry wall.

17. The Respondent last performed work on the residence in September 2023.

18. On February 16, 2024, the Claimant obtained an estimate from R. Hooks Home Improvement in the amount of \$147,711.00 to complete the scope of work under the Contract. The estimate also valued the work performed by the Respondent at \$11,500.00.

19. On June 24, 2024, the Claimant obtained an estimate from Burrell's Home Improvement in the amount of \$137,000.00 to complete the scope of work under the Contract. The estimate also valued the work performed by the Respondent at \$9,600.00.

20. No additional work has been completed based on the estimates.

DISCUSSION

STATUTORY PREREQUISITES

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) (2024). 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) (2024). The parties did not enter into a valid agreement to submit their disputes to arbitration. *Id.* §§ 8-405(c), 8-408(b)(3) (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) (2024).

The Respondent was a licensed home improvement contractor at the time the Respondent entered into the Contract with the Claimant, and the Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d).

BURDEN OF PROOF

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."). "[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 POSITIONS OF THE PARTIES

The Claimant asserted that the Respondent's failure to complete the scope of work under the Contract caused her significant financial hardship, as the Respondent stopped work once all payments from the insurance company were received.

The Fund argued that the Claimant has a legally sufficient claim; the Respondent entered into the Contract with an active license and was obligated to complete the scope of work under the Contract. The Fund argued that the Claimant established that when the Respondent stopped working at the property, the work under the Contract was incomplete and inadequate.

Regarding an award recommendation, the Claimant requested the statutory maximum, and the Fund recommended the statutory maximum.

ANALYSIS

The Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (2024). The Respondent ceased work on the property and communication with the Complainant in September 2023.

The evidence shows that the Claimant paid the Respondent to renovate her mixed-use property, but the Respondent performed unworkmanlike and inadequate home improvement work that needed completion when he walked off the job, leaving the Claimant without use of the property. I found the Claimant's testimony to be credible as to the condition the property was left in when the Respondent stopped work on the project, and photographs corroborated these facts. (Clmt. Exs. 4, 7). The Claimant further established that she paid the Respondent \$140,578.76 based on the Contract and her proof of payment. (Clmt. Ex. 5). The Respondent did not appear at the hearing to refute any of the Claimant's assertions.

After a fire damaged the property, the Claimant contracted with the Respondent to renovate the first floor salon and the second floor apartment. Under the Contract, the Respondent was to, among other things, install windows, perform electrical work and install two HVAC units. The Claimant testified that the Respondent began work under the Contract, including demolition, framing, and drywalling. The Respondent presented the Claimant with invoices/estimates from two subcontractors: N.J.B. Electric Co. for electrical work and JDL Mechanical LLC for the installation of two HVAC units. (Clmt. Exs. 10, 11). Based on this documentation, the Claimant paid the Respondent. (FOF⁸ Nos. 11, 12). The Claimant testified this electrical work was not completed and no HVAC units were installed.

⁸ Finding of Fact.

In support of her claim, the Claimant presented the testimony of Mr. Rudolph Hooks, a licensed Maryland contractor I accepted as an expert in home improvement contracting. Mr. Hooks testified that he has been a licensed contractor for more the forty years and has worked on more than one thousand properties, and that he is familiar with costs of projects through desk references. Mr. Hooks testified that he visited the property in February 2024 and observed some framing, some completed drywall and some windows were installed. Mr. Hooks testified, specifically, that the bathroom was incomplete and there was no installation of hot water heaters or HVAC units. Consistent with his written estimate, Mr. Hooks opined that the value of the Respondent's work at the property was approximately \$11,500.00, and the cost to complete the scope of work under the Contract to be \$147,711.00. (Clmt. Ex. 9; FOF No. 17). Mr. Hook concluded his testimony by offering his expert opinion that "for what was paid and what was done" the Respondent's work was unworkmanlike, incomplete and inadequate.

Donnell Burrell, a licensed Maryland contractor, who I accepted as an expert in home improvement contracting, also testified. Mr. Burrell testified that he visited the Claimant's residence in June 2024 to provide an estimate. Mr. Burrell described the property as being in various states of demolition and repair. Mr. Burrell testified he observed two HVAC units at the property, neither were new. Mr. Burrell opined that the work was not substantially complete and noted he did not observe any permits or inspection notices. Mr. Burrell stated he observed finished walls with electrical work protruding, which concerned him. Absent inspection notices, he could not verify the work performed prior to completing the dry wall. Mr. Burrell testified, consistent with his written estimate, that the value of the work the Respondent performed under the Contract was \$9,600.00, and the cost to complete the remaining scope of work under the Contract amounts to \$137,000.00. (Clmt. Ex. 8; FOF No. 18). Mr. Burrell opined that the work performed by Respondent was unworkmanlike, inadequate and incomplete.

In sum, the Claimant paid the Respondent more than \$140,000.00 for a home improvement that remains incomplete. After the Respondent ceased communication with the Claimant in October 2023, the Claimant determined that the Respondent abandoned the project in an incomplete and inadequate manner. Both Mr. Hooks and Mr. Burrell testified that the electrical work was not complete and that there was no new HVAC units installed on the property. The testimony of the Claimant, Mr. Hooks and Mr. Burrell is uncontradicted. I find that the Claimant has clearly demonstrated she paid the Respondent for work that was unworkmanlike, inadequate, and incomplete. Thus, I find that the Claimant is eligible for compensation from the Fund because the Respondent's work was unworkmanlike, inadequate, and incomplete.

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); 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 intends to retain other contractors 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). Based on the estimates provided, both Mr. Hooks and Mr. Burrell estimated that the value of the work performed by the Respondent to be between \$9,600.00 to \$11,500.00. (Clmt. Exs. 8 and 9). Based upon the thoroughness of this testimony his forty years of experience and his detailed estimate, I will use the figure presented by Mr. Hooks.⁹ Applying the formula, the Claimant's actual loss is calculated as follows:

Amount the Claimant paid to the Respondent:	\$140,578.76
Plus, reasonable amount the Claimant will be required to pay another contractor to complete the Contract: ¹⁰	\$147,711.00
Less total Contract price:	\$106,427.10
Actual loss:	\$181,862.66

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.¹¹ Bus. Reg. § 8-405(e)(1), (5) (2024); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss of \$181,862.66 exceeds \$30,000.00. Therefore, the Claimant's recovery is limited to \$30,000.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$181,862.66 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg.

⁹ I found the testimony and estimate provided by Mr. Burrell to be highly credible and uncontradicted and choose to use one estimate for ease of calculation.

¹⁰ See Clmt. Ex. 9, the estimate from R. Hooks Home Improvement.

¹¹ 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").

§§ 8-401, 8-405 (2024); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover \$30,000.00 from the Fund. COMAR 09.08.03.03B(3)(c), 09.08.03.03B(4).

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

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;¹² and

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

December 26, 2024
Date Decision Issued



Carlton A. Curry
Administrative Law Judge

CAC/emh
#215705

¹² See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2024); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 17th 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**