

IN THE MATTER OF THE CLAIM	*	BEFORE RACHAEL BARNETT,
OF DAVID ST. JEAN,	*	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 BAKYTBEK	*	
ILEBAEV,	*	OAH No.: LABOR-HIC-02-24-10933
T/A CONSTRUCTION ETC., LLC,	*	MHIC No.: 24 (75) 94
RESPONDENT	*	

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On October 30, 2023, David St. Jean (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$20,000.00 for actual losses allegedly suffered as a result of a home improvement contract with Bakytbek Ilebaev, trading as Construction Etc., LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to 411 (2024).² On April 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 April 15, 2024, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On September 13, 2024, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Erik London, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. The Respondent was self-represented.

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?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits offered by the Claimant:

- Clmt. Ex. 1 - Contract, March 19, 2023
- Clmt. Ex. 2 - Check from the Claimant to the Respondent, March 19, 2023
- Clmt. Ex. 3 - Letter from the Claimant to the Respondent, July 28, 2023
- Clmt. Ex. 4 - Email from the Claimant to the Respondent, July 10, 2023
- Clmt. Ex. 5 - Letter from Robert Ugarte, Esq. (on behalf of the Claimant's mother) to the Respondent, September 1, 2023
- Clmt. Ex. 6 - Email from Mr. Ugarte to the Claimant, January 9, 2024
- Clmt. Ex. 7 - Invoice from Md. Bldg. Permits, Inc., October 25, 2023

I admitted the following exhibits offered by the Respondent:

- Resp. Ex. 1 - Construction notes, undated
- Resp. Ex. 2 - Letter from the Respondent to the MHIC, August 31, 2023
- Resp. Ex. 3 - Site Plan Drawings, undated

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Notice of Hearing, June 5, 2024
- Fund Ex. 2 - Hearing Order, April 15, 2024
- Fund Ex. 3 - Licensing History for the Respondent, August 8, 2024
- Fund Ex. 4 - Claim Form, October 30, 2024
- Fund Ex. 5 - Notice of Hearing Approval, April 15, 2024
- Fund Ex. 6 - Complaint Form, July 24, 2023

Testimony

The Claimant testified and did not present other witnesses.

David Pfeiffer, an employee of Construction Etc., LLC testified on behalf of the Respondent.

The Fund did not present any testimony.

PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. The Claimant owns a home in Reisterstown, Maryland, which is located within Baltimore County.
2. In 2023, the Claimant's elderly mother planned to move in with him following the construction of a one-level addition to the home, which would serve as her living space.
3. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC license numbers 01-112687 and 05-134050.

4. On March 19, 2023, the Claimant and the Respondent entered into a contract to construct a 15' x 14'6" one-story addition to the Claimant's existing home for \$81,250.00 and to close down an old well and establish a new well for \$7,500.00 (Contract).

5. Mr. Pfeiffer, an employee of the Respondent, met with the Claimant and completed the Contract on behalf of the Respondent, and he remained the Claimant's contact for the Respondent throughout the construction planning process.

6. The completion date listed on the Contract was approximately eight weeks from the date of the issuance of the required permit. The Contract did not include a date by which the permit could be expected to be secured.

7. On March 19, 2023, the Claimant paid the Respondent \$20,000.00, the amount the Contract required as a deposit.

8. On April 19, 2023, the Respondent applied for the permit, which included the submission of construction drawings he had created.

9. On May 3, 2023, Baltimore County requested additional documents from the Respondent for the permit application.

10. There was an issue with the old well in that the proposed building project was too close to the site of the old well, and that had to be resolved (or a variance granted) before the permit could be approved.

11. On May 18, 2023, Baltimore County again requested documents from the Respondent.

12. The Claimant called the Respondent several times. On the occasions on which the Respondent answered the phone, he explained he was having trouble obtaining the permit. On other occasions, he did not answer. At some point, the Respondent's voicemail became full, and the Claimant was no longer able to leave a message.

13. After his voicemail filled, the Respondent did not contact the Claimant with project updates, which meant that the parties were no longer talking about the project.

14. On July 10, 2023, the Claimant sent the Respondent an email stating that if the Respondent did not begin construction by July 19, 2023, the Respondent would need to return the \$20,000.00 deposit.

15. On July 17, 2023, the Respondent delivered some additional documents to Baltimore County.

16. The Respondent did not perform any work at the Claimant's residence in advance of July 19, 2023.

17. On July 19, 2023, the Claimant requested termination of the Contract and the refund of his deposit.

18. The Respondent declined to refund the deposit and claimed that Baltimore County had completed its permit review and that he would start construction in approximately one week.

19. However, Baltimore County had not completed its permit review because the permit application was incomplete.

20. On July 28, 2023, the Claimant sent the Respondent a letter instructing the Respondent (in part), "I do not want you to show up at my home expecting to start this project. As I've stated, I want to terminate the contract and have my deposit returned." (Cl. Ex. 3).

21. On September 1, 2023, the Claimant's mother (through counsel) sent the Respondent a letter (via certified and regular mail) stating that she did not want him to proceed with the job and demanded the return of her son's deposit. The certified mail was returned unclaimed but the regular mail was not returned.

22. On September 21, 2023, Md. Bldg. Permits, Inc. applied for a building permit with Baltimore County on behalf of the Claimant. Baltimore County granted the permit on October 25, 2023.

23. The Respondent never performed any construction work called for by the Contract, nor did he respond in writing to any of the texts or emails the Claimant sent.

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.

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 or 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 Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (2024). The Claimant, not the Respondent, was the individual who was making efforts to communicate and discuss the project. The Claimant initially communicated by phone but then switched to email when the Respondent's voicemail became full and the Respondent no longer called him back. Finally, an attorney representing the Claimant's mother sent the Respondent a letter on her behalf. When the parties initially spoke, the Respondent continually cited delays. The Respondent did not reply to any of the written communications. The Respondent also ultimately gave incorrect information that the permit was ready when in fact, the permit application was still incomplete. The Respondent's only efforts to resolve the claim were providing the permit office with additional documents.

Mr. Pfeiffer testified that he believed he spoke with the Claimant in July 2023 but then was unable to retrieve cell phone records reflecting any such communication. Additionally, Mr. Pfeiffer testified that he did not recall receiving the letter from legal counsel, though he acknowledged that it was mailed to the correct address for the Respondent. Mr. Pfeiffer also testified he advised the Claimant by phone sometime after July 18, 2023, that his drawing in pursuit of the variance had been accepted by Baltimore County and that generally, he kept the Claimant updated about the permit process. I did not find his testimony concerning his communications with the Claimant to be credible, because the letter mailed by legal counsel concerning the project was mailed to the correct business address and not returned to sender. Furthermore, his inability to retrieve call records despite being given an opportunity to do so is an indication that he likely did not make the claimed phone call.

The Claimant testified, more credibly, that he was trying to find out what was happening with the project because he was eager for his elderly mother to move in with him. The Claimant further testified that he informed the Respondent that time was of the essence when they signed the Contract. The Claimant described a breakdown in communication that is supported by Claimant's Exhibits three through six. Initially, the parties spoke via phone, but then the Respondent failed to return the Claimant's calls, so the Claimant resorted to email and finally mailed communication by legal counsel. Claimant Exhibit six indicates that legal counsel did not receive a response of any kind by or on behalf of the Respondent.

Furthermore, the Claimant was sufficiently patient with the Respondent. The parties signed the Contract on March 19, 2023, and the Claimant waited four months (without a permit being secured) to terminate the Contract. It would have been unreasonable to expect the Claimant to wait any longer, or wait indefinitely, because either the Respondent was going to be able to do the job or he wasn't. If the Respondent was unable to do the job, the Claimant needed to find a new contractor who could do so. It would not be reasonable to read the Contract term regarding the completion of the job, beginning with obtaining the permit, to give the Respondent an indefinite amount of time to obtain the permit.

The Respondent performed incomplete home improvements. The Respondent kept the Respondent's deposit of \$20,000.00 but did not perform any work. Rather, the Respondent continually cited delays caused by Baltimore County, when it turned out that he had not fulfilled the requests of the permit office, and these were requests that another business was able to fulfill within a month's time. The Respondent entered the Contract on March 19, 2023, and the Claimant waited until July 19, 2023, four months' time, to cancel the Contract. Considering the significant delay in time, along with the Respondent's repeated non-responses to status inquiries,

it was reasonable for the Claimant to cancel the Contract at that time. 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. 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). 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 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). In this case, the Claimant paid the Respondent \$20,000.00.

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 of \$20,000.00 is equal to the amount paid to the Respondent and less than \$30,000.00. Therefore, the Claimant is entitled to recover his actual loss of \$20,000.00.

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 \$20,000.00 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 \$20,000.00; 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;⁴ and

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

December 5, 2024
Date Decision Issued

Rachael Barnett

Rachael Barnett
Administrative Law Judge

RAB/emh
#215345

⁴ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2024); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 7th 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*