

**IN THE MATTER OF THE CLAIM
OF ANDREW WILSON**

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**MARYLAND HOME IMPROVEMENT
COMMISSION**

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**AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ACTS OR OMISSIONS
OF DANIEL ADAMSKI t/a
REGAL CONSTRUCTION**

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**MHIC CASE NO. 15(05)549
OAH CASE NO. DLR-HIC-02-18-16511**

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FINAL ORDER

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on August 8, 2018. Following the evidentiary hearing, the ALJ issued a Proposed Decision on November 7, 2018, concluding that the homeowner Andrew Wilson (“Claimant”) failed to prove that he sustained an actual loss as a result of the acts or omissions of Daniel Adamski t/a Regal Construction (“Contractor”). *ALJ Proposed Decision* p. 10. In a Proposed Order dated December 28, 2018, the Maryland Home Improvement Commission (“MHIC”) affirmed the Proposed Decision of the ALJ to deny an award from the MHIC Guaranty Fund. The Claimant subsequently filed exceptions of the MHIC Proposed Order.

On March 7, 2019, a hearing on the exceptions filed in the above-captioned matter was held before a three-member panel (“Panel”) of the MHIC. The Claimant was present without counsel. Nicholas Sokolow, Assistant Attorney General, appeared at the exceptions hearing to present evidence on behalf of the MHIC. The Contractor was also present and represented by Marc Minkove, Esq. Neither the Claimant nor the Contractor produced a copy of the transcript of the hearing before the ALJ, and therefore the Panel’s review of the record was limited to the ALJ’s recommended decision and the exhibits introduced into evidence at the OAH hearing. COMAR 09.01.03.09(G) - (I).

The ALJ correctly states in her decision that the Claimant has the burden of proving the

validity of his claim by a preponderance of the evidence. *ALJ Proposed Decision* p. 7. In order to recover from the Fund, the Claimant had to prove at the OAH hearing that he suffered an “actual loss that results from the act or omission by a licensed contractor.” Maryland Annotated Code, Business Regulation Article (“BR”), § 8-405(a). The term “actual loss” is defined in the statute as “the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” BR § 8-401. The ALJ found that the Claimant did not have problems with the quality of the work, but rather alleged the Contractor abandoned the job and that the work was incomplete. *ALJ Proposed Decision* p. 8.

In determining whether the Contractor abandoned the job, the ALJ looked to the testimony of the Claimant regarding the end of his working relationship with the Contractor, and weighed it against a letter, dated May 15, 2017, sent from the Contractor to the Claimant. *ALJ Proposed Decision* p. 9. Although the Claimant argued that the Contractor had abandoned the job, the Contractor in the letter mentions how he had been locked out of the property several months prior, and inquires of the Claimant whether he should continue his work on the house. *OAH Hearing Contractor’s Exhibit 6*. The ALJ specifically found the letter to be more credible than the Claimant’s testimony. *ALJ Proposed Decision* p. 9. As a result, the ALJ found that the Contractor did not abandon the job. *Id.*

The ALJ also assessed whether the Contractor was at fault for not completing the job. In doing so the ALJ again looked to the testimony of the parties and found credible the Contractor’s testimony that he was unable to complete some of the work because the Claimant failed to supply the materials he was supposed to provide under the contract. *ALJ Proposed Decision* p. 9. The ALJ notes in her decision that “[t]he Claimant did not offer any evidence to rebut this testimony.” *Id.* As a result, the ALJ found that the Claimant was at least partially at fault for the incomplete

work of the Contractor. *ALJ Proposed Decision* p. 9-10. This finding is further supported by the contract signed by the parties on June 6, 2015, and its attachments, that specify the Claimant was to provide a number of materials. *OAH Hearing Claimant's Exhibit 10*.

The parties did not provide a transcript of the OAH hearing for consideration by the Panel on exceptions, and therefore the Commission is left with the assessments of the testimony made by the ALJ. COMAR 09.01.03.09(H)-(I). The ALJ was tasked with observing the demeanor of the witnesses as they testify, judge their credibility, and ultimately make findings of fact based on this testimony. The Panel will not overturn the credibility determinations of the ALJ in this case, and the ALJ's decision is otherwise thorough, supported by the evidence in the record and correct as a matter of law. The Panel does not find that the ALJ erred in her decision and will not overturn it on exceptions.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this **5th** day of **June 2019 ORDERED:**

- A. That the Findings of Fact of the Administrative Law Judge are **AFFIRMED**;
- B. That the Conclusions of Law of the Administrative Law Judge are **AFFIRMED**; AND
- C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is **AFFIRMED**;
- D. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

Andrew Snyder
Chairperson –Panel
Maryland Home Improvement
Commission

IN THE MATTER OF THE CLAIM
OF ANDREW WILSON,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF DANIEL ADAMSKI,
T/A REGAL CONSTRUCTION,
RESPONDENT

* BEFORE RACHAEL BARNETT,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: DLR-HIC-02-18-16511
* MHIC No.: 15(05)549

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PROPOSED DECISION

Maryland Home Improvement
State's Exhibit # 1

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 November 20, 2017, Andrew Wilson (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$32,000.00 in actual losses allegedly suffered as a result of a home improvement contract with Daniel Adamski, trading as Regal Construction (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015). On May 22, 2018, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on August 8, 2018, at the Department of Natural Resources in Annapolis, Maryland. Bus. Reg. § 8-407(e). Hope Sachs, Assistant Attorney General, Department of

Labor, Licensing and Regulation (Department), represented the Fund. The Claimant represented himself. Mark Minkove, Esquire, represented the Respondent, who was present. The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2018); 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 on the Claimant's behalf:

- Clmt. Ex. 1 - Photographs of the Property under construction, undated
- Clmt. Ex. 2 - Project agreement, December 8, 2016
- Clmt. Ex. 3 - Project agreement, May 1, 2017
- Clmt. Ex. 4 - Magothy Plumbing bills, various dates
- Clmt. Ex. 5 - O&C General Constructors Inc. proposal, June 29, 2017
- Clmt. Ex. 6 - Work service contract and agreement, September 3, 2013
- Clmt. Ex. 7 - List of work items completed by Respondent, January 15, 2015
- Clmt. Ex. 8 - Letter from MHIC to Respondent, December 11, 2014
- Clmt. Ex. 9 - List of work items to be completed at the Property (compiled by Respondent), May 12, 2015
- Clmt. Ex. 10 - Work service contract and agreement, June 6, 2015
- Clmt. Ex. 11 - Addendum to contract dated September 3, 2013, May 12, 2015

Clmt. Ex. 12 - Photocopies of checks paid from Claimant's mother to Respondent, various dates from September 9, 2013 – June 15, 2015

Clmt. Ex. 13 - Receipt for purchase of doors from Lowe's, August 20, 2015

Clmt. Ex. 14 - Photograph of damaged kitchen cabinets, undated, with attached receipt for various items from Lowe's, November 11, 2017

Clmt. Ex. 15 - Work order, August 18, 2015

I admitted the following exhibits on the Respondent's behalf:

Resp. Ex. 1 - Claim filed with MHIC, November 4, 2014

Resp. Ex. 2 - Letter from Respondent to MHIC, December 11, 2014

Resp. Ex. 3 - Contract between the Claimant and Respondent, January 15, 2015

Resp. Ex. 4 - Letter from Respondent to the parents of the Claimant, January 28, 2015

Resp. Ex. 5 - Letter from Respondent to the parents of the Claimant, May 12, 2015

Resp. Ex. 6 - Letter from Respondent to Claimant, May 15, 2017, with attached envelope

Resp. Ex. 7 - Anne Arundel County, Department of Inspections and Permits, permit status display, August 13, 2014

Resp. Ex. 8 - Anne Arundel County Department of Inspections and Permits, compliance cases, various dates

Resp. Ex. 9 - Photographs of attic space in the Property, undated

Resp. Ex. 10 - E-mail from Respondent to Claimant, February 11, 2016

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 - Notice of hearing, issued May 30, 2018 for the hearing on August 8, 2018

Fund Ex. 2 - Registration with the Home Improvement Commission for Respondent's business license, August 7, 2018

Fund Ex. 3 - Letter from DLLR to Respondent, August 24, 2017, with attached claim, dated July 20, 2017

Testimony

The Claimant testified and presented the testimony of his father, Tom Wilson, and Robert Thompson, Owner of Freestate Ultima, LLC.

The Respondent testified on his own behalf.

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 48111.
2. In December 2009, the Claimant purchased a home (the Property) located in Anne Arundel County, Maryland. At the time of purchase, some of the walls had holes in them and the Property was barely livable.
3. Following the purchase, the Claimant did not move in but rather lived elsewhere while a contractor¹ began work on the Property.
4. Prior to September 2013, the initial contractor stopped working on the Property.
5. On September 3, 2013, the Claimant and the Respondent entered into a contract (Contract) to gut-renovate the entire property. The work included the following areas of the Property: master bedroom, closet, master bath, middle bedroom, another closet, kitchen/dining room, hall bathroom, right side porch, living room, attic, and basement. The proposed work on the attic would preserve it as a non-habitable space.
6. The original agreed-upon Contract price was \$75,114.56.
7. On September 9, 2013, the Claimant's parents paid the Respondent \$25,038.19.

¹ The name of the first contractor was not included in the evidence; this individual is not party to this claim.

8. The Claimant's parents were active participants in the renovation, paid the Respondent for the work, met with him and stopped by the Property to observe the work.

9. On November 20, 2013, the Claimant's parents paid the Respondent \$25,038.19.

10. Sometime in 2014, Anne Arundel County placed a stop work order on the Property. As a result, the Respondent directed the Claimant and his parents that they needed to hire a structural engineer in order for the project to move forward.

11. The Respondent worked on other jobs in the interim.

12. The Claimant and his parents hired a structural engineer who created plans for the Property and the Respondent resumed work on an irregular basis.

13. On November 4, 2014, the Claimant and his father filed a claim with the MHIC.

14. In late November to early December 2014, the Claimant and Respondent agreed to have the Respondent resume work.

15. In early December 2014, the Claimant and his father withdrew their November 4, 2014 complaint.

16. On January 15, 2015, the Respondent sent the Claimant a list of items completed from the estimate dated August 30, 2013.

17. On May 12, 2015, the Claimant provided a new contract to the Claimant's parents, indicating that \$48,259.99 worth of work had been completed as of January 15, 2015, leaving a remaining balance of \$26,854.57, adding on an estimate for new items for \$22,492.97 for a new contract amount of \$49,347.54. This amount is discounted in handwriting by the Respondent to \$40,000.00.

18. On August 13, 2015, the Claimant's parents paid the Respondent \$10,000.00.

19. On August 18, 2015, the Respondent gave the Claimant and his mother a quote to remove eight storm windows, reframe them and install new windows with trim and finishings for \$1,848.00.

20. On August 26, 2015, the Claimant accepted the August 18, 2015 contract offer by having his mother provide payment in the amount of \$1,848.00.

21. In late 2015 or early 2016, the Claimant directed the Respondent to convert the attic into a livable space. This work was not part of any contracts the parties had entered into. The Respondent declined to do the work.

22. In February 2016, the Respondent informed the Claimant that his HVAC (heating ventilation and air conditioning) unit was too small for the size of his Property and that the Claimant would need the Property to undergo an HVAC inspection with Anne Arundel County.

23. In November 2016, Mr. Thompson, a contractor, visited the Property.

24. On December 8, 2016, Mr. Thompson and the Claimant entered into a contract entitled "drywall installation proposal," for the installation and finishing of drywall to all walls and ceilings of the home except the master bath and front porch areas, sanding the drywall and repairing existing drywall with spackle in the back room off of the kitchen. The agreed-upon contract price was \$9,000.00.

25. In January 2017, the Claimant changed the locks on the Property and did not provide new keys to the Respondent.

26. In 2017, after Mr. Thompson began working on the Property, the Respondent returned to the Property and did electrical work.²

27. On May 15, 2017, the Respondent sent the Claimant a letter noting the locks had been changed and asking whether the Claimant wished for him to continue with the work.

² The exact date of this work is unknown.

28. On July 20, 2017, the Claimant filed a new claim with the MHIC for a claim amount of \$32,000.00 against the Respondent.

DISCUSSION

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. §8-407(e)(1) (2015); Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3).³ “[A] preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces . . . a belief that it is more likely true than not true.” *Coleman v. Anne Arundel Cty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002) (quoting *Maryland Pattern Jury Instructions* 1:7 (3d ed. 2000)).

An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor.” Md. Code Ann., Bus. Reg. § 8-405(a) (2015)⁴; *see also* COMAR 09.08.03.03B(2) (“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 not proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. The parties’ working relationship had significant challenges. In 2014, when Anne Arundel County issued a stop work order, the project was delayed until the Claimant hired a structural engineer to provide needed guidance on the renovation project. However, the Respondent acknowledged he worked on other more lucrative projects rather than

³ As noted above, “COMAR” refers to the Code of Maryland Regulations.

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

resuming work on the Property as soon as he was able. This delay led to the Claimant's decision to file a claim in November 2014, which he later withdrew. Additionally, the parties disagreed over how the work would proceed, namely the size of the HVAC unit and whether the attic would become a habitable area of the home. Despite the parties' frustrations and delays, the Respondent did not perform unworkmanlike, inadequate or incomplete home improvements.

The Claimant testified he had no problems with the quality of the work performed by the Respondent, but rather his concern was the Respondent did not regularly show up to work, would send one worker for a day and then no one would work on the Property for weeks on end. The Claimant alleges the Respondent performed incomplete work and abandoned the job. Incomplete work and work abandonment are bases for recovery from the MHIC under Business Regulations Article 8-401.

The Claimant argued the Respondent abandoned the job but also that he told the Respondent to stop work. Following the Claimant's decision to rescind the November 4, 2014 complaint with the MHIC, the Claimant and the Respondent entered into contracts for work on the Property in May 2015⁵ and August 2015. The Claimant testified he told the Respondent not to return to work but did not provide a time frame for this direction. During his direct examination, the Claimant testified the Respondent did not show up for work after July 2015; however, on cross examination the Claimant testified he did not know when the Respondent stopped working on the Property and that additional work beginning in August 2015 was done by an associate of the Respondent, named "Tommy."

As the Claimant's testimony progressed, he became increasingly defensive and regularly used the phrase "to the best of my knowledge" when answering questions. Following his testimony, I was unsure why or when the working relationship between the Claimant and

⁵ The Claimant and his parents accepted this contract in August 2015 when they remitted payment in response to the Respondent's contract offer.

Respondent severed and I did not reach the conclusion that the Respondent abandoned the job. Tom Wilson testified very briefly, stating only that his son was involved in the renovation and available for decision making. Therefore, there was no opportunity to gather the missing information from other individuals who were privy to the project at the Property. On May 15, 2017, the Respondent wrote a letter to the Complainant, noting he was locked out of the Property several months ago and asking whether he should continue work; this letter contradicts the Claimant's testimony that he told the Respondent to stop work and that the Respondent abandoned the job. This letter was written prior to the 2017 complaint now at issue and, I find it to be more credible than the Complainant's testimony. Therefore, I have not concluded the Respondent abandoned the job.

The Claimant also argued the Respondent did incomplete work. The Claimant argued he had to hire a new contractor, Mr. Thompson, to complete the work. The Complainant testified the cost of the unfinished items was \$32,000.00. However, the Respondent testified the scope and cost of the work changed after he receiving the engineer's drawings in April 2015. Due to the structural issues detected by the engineer, the Respondent testified parties entered into a new contract. The date of the contract was in May 2015 and the Claimant accepted it in August 2015 by paying a deposit to the Respondent. The Respondent testified the Claimant demanded he convert the attic into a habitable space; however, the Respondent informed the Claimant this was not possible because the engineer's drawings showed it as a basic attic, non-habitable space, and he had to follow the engineer's plans unless new plans were drawn up an engineer and approved by Anne Arundel County. The Respondent also testified he was unable to complete some of the work, because the Claimant did not supply the materials the Claimant was supposed to supply under the Contract, including flooring and fixtures. The Claimant did not offer any evidence to rebut this testimony. Therefore, it is hard for me to determine fault for the work the Respondent

did not complete. A claimant may only recover compensation from the Fund for a loss that results from an act or omission by a licensed contractor. Considering the testimony on this issue, I find that the actions of the Claimant were at least partly to blame for the incomplete work of the Respondent. Clearly, the Respondent did not finish all of the work; however, he was not able to do so when he was locked out or not provided materials for the job.

The Respondent's new contractor, Robert Paul Thompson testified about the scope of his responsibilities at the Property. He provided an estimate in November 2016 and began work in December 2016 at the Property. He testified he had seen a copy of the contract between the Claimant and the Respondent but was not sure whether the work he (Mr. Thompson) was performing was the same as the work unfinished by the Respondent. Mr. Thompson testified the cost of the work was \$26,000.00 (of which the Claimant had paid \$22,000.00); however, the only contract introduced into evidence for work done by Mr. Thompson showed a cost of \$9,000.00 for drywall. Mr. Thompson recalled that Mr. Adamski had an electrician do electrical work on the Property while he was also working on it. It appears from this testimony that the Respondent did some work in 2017, after being locked out. Mr. Thompson further testified he found deficiencies in the work done on the Property; however, he did not know whether this work was done by the Respondent or the prior contractor.

For the aforementioned reasons, I do not find that the Claimant is eligible for compensation from the Fund due to incomplete or abandoned work. The Claimant did not allege the Respondent's work was unworkmanlike.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has not sustained an actual and compensable loss as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund deny the Claimant's claim; and

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

Signature on File

November 7, 2018
Date Proposed Decision Issued

Rachael Barnett
Administrative Law Judge

RAB/da
176703

PROPOSED ORDER

WHEREFORE, this 28th day of December, 2018, 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.

Joseph Tunney

***Joseph Tunney
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION