

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF EOIN ELLIFFE,</b></p> <p><b>CLAIMANT</b></p> <p><b>AGAINST THE MARYLAND HOME</b></p> <p><b>IMPROVEMENT GUARANTY FUND</b></p> <p><b>FOR THE ALLEGED ACTS OR</b></p> <p><b>OMISSIONS OF BRUCE WAGNER,</b></p> <p><b>RESPONDENT</b></p>	<p>* <b>BEFORE LORRAINE E. FRASER,</b></p> <p>* <b>AN ADMINISTRATIVE LAW JUDGE</b></p> <p>* <b>OF THE MARYLAND OFFICE</b></p> <p>* <b>OF ADMINISTRATIVE HEARINGS</b></p> <p>*</p> <p>*</p> <p>* <b>OAH No.: DLR-HIC-02-18-13327</b></p> <p>* <b>MHIC No.: 16 (05) 1309</b></p>
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**PROPOSED DECISION**

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
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DISCUSSION  
PROPOSED CONCLUSIONS OF LAW  
RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On November 14, 2017, Eoin Elliffe (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$69,787.00 in actual losses allegedly suffered as a result of a home improvement contract with Bruce Wagner (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015). On April 25, 2018, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on October 3, 2018, at the Tawes State Office Building in Annapolis, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e) (2015). Eric London, Assistant Attorney General, Department of Labor, Licensing, and Regulation (Department), represented the Fund.

Peter Goldsmith, Esquire, Linowes and Blocher, LLP, represented the Claimant, who was present. The Respondent represented himself.

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:

- Claimant 1 Contract between the Claimant and the Respondent, 10/18/15, with attached architectural drawings and a list of fixtures, signed by the Claimant on 10/21/15
- Claimant 2 Thirty-seven photographs of the work completed and not completed by the Respondent, taken by the Claimant in January 2016 (pages are labeled 2a – 2s)
- Claimant 3 Change Order between the Claimant and the Respondent, 11/9/15; Invoice from the Respondent, 11/10/15
- Claimant 4 Checks paid to the Respondent: \$37,000.00 dated 10/21/15; \$25,700.00 dated 11/13/15; \$33,504.00 dated 12/4/15; \$17,000.00 dated 12/18/15
- Claimant 5 The Claimant's written statement describing the work not completed by the Respondent
- Claimant 6 Estimate from Royal Construction Company for \$74,900.00, 2/16/16
- Claimant 7 Estimate from Ready Building Services for \$116,435.00, 3/13/16
- Claimant 8 Contract between the Claimant and VKB Kitchen & Bath for \$20,000.00, 6/6/18
- Claimant 9 Invoices from American Glass Co., Inc., for a total of \$1,747.63, 8/2/16 & 11/2/16

- Claimant 10 Receipt from Signature Hardware for \$3,971.65, 7/31/16 (the Claimant later returned \$1,183.95 worth of the items)
- Claimant 11 Receipt from Ferguson Enterprises, Inc., for \$2,086.11, 9/30/16
- Claimant 12 Invoices from Atlas Marble & Tile for a total of \$3,556.33, 8/5/16-8/31/16
- Claimant 13 Invoice from Bob Hatch for \$1,720.31, 8/10/16
- Claimant 14 Estimate from Handyman by Jase for \$2,177.80, Spring 2016 (of which \$1,739.00 worth of work was performed and paid for)
- Claimant 15 Invoice from Dawson Electric for \$522.00, 8/10/16
- Claimant 16 Estimate from Five Star Painting for \$3,779.00, 5/16/18
- Claimant 17 Invoice from W. Robertson Heating & Air Conditioning Co., Inc., for \$9,500.00, June 2016
- Claimant 18 Invoices from Millersville Plumbing & Drain Service for a total of \$4,317.5, 4/21/16-6/24/16
- Claimant 19 Invoices from Cousins Renovations for a total of \$2,850.00, 6/28/16-9/16/16
- Claimant 20 Invoices from Universal Plumbing & Heating, Inc., for a total of \$1,670.00, 8/16/16-10/21/16
- Claimant 21 Invoice from Kenny Doerr for \$1,675, undated
- Claimant 22 Invoice from Chesapeake Floor Design for \$6,335.00, 5/10/17
- Claimant 23 Letter to the Respondent from Alan F.M. Garten, Fedder and Garten, attorney for the Claimant, 2/3/16
- Claimant 24 Letter to the Respondent from Jason R. Engel, Fedder and Garten, attorney for the Claimant, 2/17/16
- Claimant 25 Letter to the Respondent from Peter Z. Goldsmith, Linowes and Blocher, LLP, attorney for the Claimant, 4/1/16

The Respondent did not offer any exhibits into evidence.

I admitted the following exhibits on behalf of the Fund:

- Fund 1 Notice of Hearing, 7/5/18
- Fund 2 Hearing Order, 4/20/18

- Fund 3 The Respondent's licensing history, 6/11/18
- Fund 4 MHIC Claim Form, filed 11/14/17
- Fund 5 Letter from the MHIC to the Respondent, 11/17/17

Testimony

The Claimant's wife, Uju Obianuju, testified.

The Respondent and the Fund did not offer any testimony.

**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 01-90692.
2. On October 21, 2015, the Claimant and the Respondent entered into a contract to significantly renovate all four levels of the Claimant's home based on architectural drawings and a list of fixtures and materials to be supplied by the Respondent (Contract).
3. On the basement level, the work included installing a guest room with walls, a closet, and an exterior window, replacing the existing vanity and toilet, installing a new tub, creating a play area and a walled storage area, removing a wall, removing paneling and installing drywall, removing acoustical ceiling tile and installing gypsum wallboard, and installing recessed lighting.
4. On the first floor, the work included enlarging the kitchen, removing and installing walls, installing a new door, installing a pantry, reconfiguring the kitchen cabinets, constructing a kitchen island, installing a mud room bench and cubbies, installing a hall closet, and replacing the toilet and vanity in the powder room.

5. On the second floor the work included expanding the master bedroom, removing and installing walls, installing closets, moving and installing the toilet and double vanity in the master bath, retiling the master shower, moving the laundry room, and installing a utility sink.

6. On the third floor (attic) the work included installing walls and doors, and constructing an office and bathroom.

7. On all floors, flooring and walls were to be patched as needed and walls were to be painted.

8. The Contract stated that work would be completed ninety days after beginning.

9. The original Contract price was \$110,654.00.

10. On November 9, 2015, the Claimant and the Respondent agreed to add to the contract. The Respondent was to install a new five ton HVAC unit on the third level to serve levels two and three and relocate the existing outside condensing unit. This work would add ten days to the length of the project. The price for the change order was \$15,700.00.

11. The Respondent and his crew performed work from October 2015 through December 2015.

12. The Respondent installed the basement window; however, water comes in the window.

13. The Respondent installed some recessed lighting but the lights are loose and not properly installed. He did not install all of the lighting fixtures.

14. The Respondent installed walls and closets in some places but did not paint them. He did not move the wall between the mud room and powder room. He did not install the mud room bench and cubbies. He did not install walls on the third floor for the office and bathroom.

15. The Respondent did not install any bathroom fixtures in any of the bathrooms.

16. The Respondent patched the flooring in some places with materials that did not match. He did not patch the flooring in other places.

17. The Respondent did not build the laundry room on the second floor or move the washer and dryer.

18. On December 1, 2015, the Respondent presented the Claimant with an invoice including additional change orders for additional costs related to the HVAC system, fixing a leak in the dishwasher, installing curtains and hardware, an additional cost for the vanity in the first floor powder room, installing a window on the second floor, and creating a pocket beam for the kitchen wall (made necessary because the Respondent removed a load bearing wall). The price for these change orders totaled \$9,850.00. The Claimant told the Respondent not to install the window on the second floor, reducing the price by \$1,500.00 to \$8,350.00.

19. Sometime thereafter in December 2015, the Claimant and the Respondent had a meeting during which the Respondent presented the Claimant with some additional charges related to the HVAC system and the pocket beam for the kitchen, a new gas line for the new range location, and additional drywall work, painting, and carpeting. The additional charges totaled \$9,171.00. The Claimant did not agree to these additional charges and told the Respondent that they needed to eliminate some work from the contract because the cost kept going up.

20. Approximately one week after the December meeting, the Respondent stopped work at the Claimant's home. He did not perform any work after December 2015.

21. The agreed-upon Contract price was \$134,704.00 (\$110,654.00 original + \$15,700.00 amendment + \$8,350 amendment).

22. Between October 21, 2015 and December 28, 2015, the Claimant paid the Respondent a total of \$113,204.00.

23. On February 3, 2016, the Claimant's attorney wrote a letter to the Respondent identifying the work that needed to be completed or repaired and asking him to complete the work.

24. The Respondent did not return to the Claimant's home to complete and repair the work.

25. The Claimant obtained two estimates from contractors to complete and repair the work under the Contract.

26. On February 16, 2016, Royal Construction Company estimated it would cost \$74,900.00 to complete the work in the Contract.

27. On March 13, 2016, Ready Building Services estimated it would cost \$116,435.00 to complete the work in the Contract.

28. The Claimant's actual loss is \$53,400.00.

### 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). "[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); *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."

Md. Code Ann., Bus. Reg. § 8-401 (2015). For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. The Respondent performed unworkmanlike, inadequate or incomplete home improvements. As described in detail in the findings of fact above, the Respondent stopped working at the Claimant's home in December 2015 and did not complete the work identified in their Contract. In addition, some of the work the Respondent performed needed to be corrected. The Claimant's wife described in detail the Respondent's incomplete and incorrect work. Her testimony was consistent with and supported by photographs showing the work as the Respondent left it. On February 3, 2016, the Claimant asked the Respondent to return to complete and repair the work. The Respondent did not return to complete and repair the work. The Respondent appeared at the hearing but he did not testify or present any evidence. As a result, the Claimant's evidence is uncontradicted that the Respondent had not completed the work and that some of the work needed to be corrected. Thus, I 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. Md. Code Ann., Bus. Reg. § 8-405(e)(3) (2015); 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.

In this case, the Respondent performed some work under the contract, and the Claimant obtained two estimates from other contractors to complete or remedy that work. For the



purposes of this case, I used the lower estimate obtained by the Claimant. 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 Claimant's actual loss is calculated as follows:

Amount paid to the Respondent	\$113,204.00
Amount to complete/correct work	<u>+\$74,900.00</u>
	\$188,104.00
Original Contract price	<u>-\$134,704.00</u>
Actual loss	\$53,400.00

The Business Regulation Article caps a claimant's recovery at \$20,000.00 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. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5) (2015); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss of \$53,400.00 exceeds \$20,000.00. Therefore, the Claimant's recovery is limited to \$20,000.00. Md. Code Ann., Bus. Reg. § 8-405(e)(1) (2015); COMAR 09.08.03.03D(2)(a).

**PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual loss of \$53,400.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover \$20,000.00 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(1) (2015); COMAR 09.08.03.03D(2)(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;<sup>1</sup> and

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

**Signature on File**

December 28, 2018  
Date Decision Issued

\_\_\_\_\_  
Lorraine E. Fraser  
Administrative Law Judge

LEF/cmg  
# 177427

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

**PROPOSED ORDER**

***WHEREFORE, this 25<sup>th</sup> day of February, 2019, 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.***

***Andrew Snyder***

***Andrew Snyder  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**