

IN THE MATTER OF THE CLAIM  
OF SHOTA KAKHETELIDIZE,  
CLAIMANT  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ALLEGED ACTS OR  
OMISSIONS OF FRANK  
AMBROSINO,  
T/A ADDITIONS ETC., LLC,  
RESPONDENT

\* BEFORE MICHAEL J. WALLACE,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* OAH No.: DLR-HIC-02-19-00467  
\* MHIC No.: 17 (05) 1290  
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**PROPOSED DECISION**

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 or about September 26, 2017, Shota Kakhettelidize (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$45,000.00 in actual losses allegedly suffered as a result of a home improvement contract with Frank Ambrosino, trading as Additions Etc., LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).<sup>1</sup> On December 31, 2018, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

<sup>1</sup> Unless otherwise noted, all references to the Business Regulation Article herein cite the 2015 Replacement Volume of the Maryland Annotated Code.

I held a hearing on May 6, 2019 at the OAH in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e). Jessica B. Kaufman, Assistant Attorney General, Department of Labor, Licensing, and Regulation (Department), represented the Fund. The Claimant represented himself. After waiting more than fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. Code of Maryland Regulations (COMAR) 28.02.01.23A.<sup>2</sup>

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); 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 Ex. No. 1. Proposal, dated March 5, 2017
- Claimant Ex. No. 2. Home Improvement Contract with Ameripro Remodeling Inc., undated
- Claimant Ex. No. 3. Bid Proposal from Handyman On Call MD., dated March 12, 2019
- Claimant Ex. No. 4. Photograph of Claimant's garage
- Claimant Ex. No. 5. Checks written by Claimant to Respondent with associated bank statements, March 2017

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<sup>2</sup> Notice of the hearing was mailed to the Respondent at his addresses of record by regular and certified mail on March 1, 2019 and April 18, 2019 20, 2018, COMAR 09.08.03.03A(2). The March 1, 2019 notice sent to the West Woodwell Road address was returned as undeliverable. The copy of the notice sent by regular mail was not returned. 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. I determined that the Respondent had received proper notice, and proceeded to hear the captioned matter.

- Claimant Ex. No. 6. Receipts and invoices for materials provided by the Claimant, various dates
- Claimant Ex. No. 7. Email between Claimant and Respondent, dated June 25, 2017
- Claimant Ex. No. 8. Series of thirty photographs of Respondent's work
- Claimant Ex. No. 9. Series of twenty-eight photographs of Respondent's work
- Claimant Ex. No. 10. Receipts for materials provided by the Claimant to complete the project contracted to the Respondent, various dates

I admitted the following exhibits on behalf of the Fund:

- Guaranty Fund Ex. No. 1. Notices of Hearing, dated March 1, 2019, returned as undeliverable mail to Respondent, by USPS<sup>3</sup> on April 1, 2019 and April 8, 2019
- Guaranty Fund Ex. No. 2. DLLR Hearing Order, dated December 21, 2018 with attached Home Improvement Claim Form, received September 26, 2017
- Guaranty Fund Ex. No. 3. Department of Labor, Licensing & Regulation I.D. Registration, Occupational/Professional License History, and Change Code Screens, April 17, 2019
- Guaranty Fund Ex. No. 4. Letter from MHIC to Respondent, November 27, 2017 with attached Home Improvement Claim Form

The Respondent did not appear for the hearing and did not submit any exhibits for consideration.

Testimony

The Claimant testified on his own behalf. Neither the Respondent, nor the Fund, presented 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 4664391 or 5041343.<sup>4</sup>
2. At all relevant times, the Claimant was the owner of a home located on Baltimore Boulevard in Finksburg, Maryland, which is his personal residence. The Claimant does not own any other homes.

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<sup>3</sup> United States Postal Service

<sup>4</sup> The Respondent's MHIC license number was 4664391 from February 12, 2015 to February 15, 2017, and 5041343 from July 7, 2017 to February 15, 2019.

3. The Claimant is not an employee, officer or partner of the Respondent, nor is he related to any of the Respondent's employees, officers or partners, either by blood or marriage

4. On March 6, 2017, the Claimant and the Respondent entered into a contract to renovate the Claimant's home. The work included refinishing and reinstalling stairs, floors, and railings, installing a new entry door, install new light fixtures and electric outlets, install new interior doors, on the first and second floors, demo and reinstall two bathrooms and the kitchen, repaint the first floor walls and the conversion of the garage into a two story living space with the exterior to match the existing. The cost associated with this project was \$53,672.00

5. Work on the project began immediately.

6. The Claimant paid a total of \$42,890.00 to the Respondent as follows:

- \$17,890.00 on March 7, 2017
- \$3,000 on March 19, 2017
- \$5,000.00 on March 27, 2017
- \$10,000.00 on March 29, 2017
- \$7,000.00 on April 5, 2017

7. The Respondent and his workers sporadically worked on the project for several weeks after March 7, 2017 but then ceased working altogether.

8. After several unsuccessful attempts to call the Respondent, on or about June 25, 2017, the Claimant sent the Respondent an email asking about the status of the project.

9. The Respondent sent a worker to the Claimant's house shortly thereafter who asked the Claimant to pay more money before work could resume. The Claimant declined to pay any more money.

10. The Claimant expended an additional \$4,971.48 from April 2017 through September 2017 for materials in an attempt to complete the project.

11. The Claimant obtained an estimate from Ameripro Remodeling, LLC to complete the project at a cost of \$49,850.00. Of this amount, \$32,500.00 was for the garage renovation.

12. The Claimant also obtained an estimate from Handymanoncall.com to complete the garage renovation at a cost of \$28,939.00.

13. The Claimant has not taken any action to recover monies for the Respondent's abandonment and failure to complete the contract work, other than the instant claim.

## DISCUSSION

### LEGAL FRAMEWORK

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)). However, 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); COMAR 09.08.03.03B(1).

A claimant 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.

Certain claimants are excluded from recovering from the Fund altogether. In this regard, a claimant must prove that: (a) the claimant resides in the home as to which the claim is made, or she owns no more than three dwelling places; (b) the claimant is not an employee, officer or

partner of the contractor; or the spouse or other immediate relative of the contractor or the contractor's employees, officers or partners; (c) the work at issue did not involve new home construction; (d) the claimant did not unreasonably reject the contractor's good faith effort to resolve the claim; (e) the claimant complied with any contractual arbitration clause before seeking compensation from the Fund; (f) there is no pending claim for the same loss in any court of competent jurisdiction and the claimant did not recover for the actual loss from any source; and (g) the claimant filed the claim with the MHIC within three years of the date the claimant knew, or with reasonable diligence should have known, of the loss or damage. Md. Code Ann., Bus. Reg. §§ 8-405(c), (d), (f), and (g), 8-408(b)(1); Md. Code Ann., Bus. Reg. § 8-101(g)(3)(i) (Supp. 2018).

For the reasons that follow, I find that the Claimant has proven eligibility for compensation.

#### **THE MERITS OF THIS CASE**

##### **Statutory Eligibility**

The undisputed evidence in this case establishes there are no *prima facie* impediments barring the Claimant from recovering from the Fund. *Id.* The Claimant filed his claim within three years of realizing that the Respondent would not be completing the work under the Contract. In addition, the Claimant testified that the home improvement work at issue in this case concerned his personal residence in Maryland, which is the only residential property he owns; that he was not an employee, officer or partner of the Respondent and is not related to any of the Respondent's employees, officers or partners; the Respondent made no reasonable effort to resolve the claim in this matter; and the Claimant has not taken any other legal action to recover monies for the Respondent's failure to complete the garage renovation at his house.

The remaining prerequisite under section 8-405 of the Business Regulation Article is the requirement that the Claimant complies with the arbitration clause contained in the Contract before seeking compensation from the Fund. In this case, there was no arbitration clause so it was appropriate for the MHIC to forward this Claim for a merits hearing.

Was the Home Improvement Unworkmanlike, Inadequate or Incomplete?

The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. The undisputed evidence in this case establishes that in March 2017, the Respondent entered a contract with the Claimant to renovate his house including the transformation of a garage into a two story living space. The Claimant paid the Respondent a total of \$42,890.00 from March 7, 2017 through April 5, 2017. The evidence established that the Respondent and his workers sporadically worked on the project for several weeks from March through April 2017 but then ceased working altogether. The Respondent attempted to contact the Respondent but after several unsuccessful attempts to call the Respondent, The Claimant sent the Respondent an email on June 25, 2017 asking about the status of the project. The Respondent's response was that no more work could be done because the Respondent was overextended and could not afford to finish the project. He requested that the Claimant pay more money before work could resume. The Claimant declined to pay any more money, however. The evidence further established that the Claimant paid an additional \$4,971.48 from April 2017 through September 2017 for materials in an attempt to complete the project. He provided receipts to document his expenditures. With the project still not completed, the Claimant obtained estimates from Ameripro Remodeling, LLC and Handymanoncall.com to complete the project. Ameripro quoted a price of \$49,850.00, of which \$32,500.00 was for the garage renovation. Handymanoncall.com provided an estimate of \$28,939.00 to complete the garage renovation.

The Claimant provided credible testimony as to the incompleteness and deficiencies in the Respondent's work and submitted as evidence photographs, estimates and inspection records to corroborate his testimony.

The incompleteness of the work is obvious from an examination of the photographs, which were taken in the early summer of 2017, shortly after the Respondent indicated that he would be performing no more work without more money being paid. The photographs show incomplete and unfinished work. There was no work done at all on the garage renovation. The Respondent failed to appear at the hearing to refute any of the Claimant's assertions and evidence.

Based on the aforementioned incomplete, inadequate and unworkmanlike home improvements, I find that the Claimant is eligible for compensation from the Fund.

*Amount of Actual Loss*

Having found eligibility for compensation I must now determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. 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 contacted other contractors to complete and 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).

In this matter, the Claimant made payments to the Respondent, and also incurred costs for materials to have the Respondent's work completed. The Claimant also obtained estimates from other licensed contractors to complete the project within the scope of the original contract.

The Claimant's actual loss is as follows:

Amount paid to Respondent	\$ 42,890.00
Materials purchased by the Claimant	\$ 4,971.48
Amount necessary for other	\$ 30,719.50 <sup>5</sup>
<u>contractors to complete the Contract</u>	<u>+ \$ 17,350.00<sup>6</sup></u>
TOTAL	\$ 95,930.98
<u>Original Contract Price</u>	<u>- \$ 53,672.00</u>
Actual Loss	\$ 42,258.98

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); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss is less than the amount paid to the Respondent but more than \$20,000.00. Therefore, the Claimant is entitled to recover the maximum allowed from the Fund, which is \$20,000.00.

#### **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 (2015); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover \$20,000.00 from the Fund. COMAR 09.08.03.03B(3)(c).

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<sup>5</sup> Average of the two estimates from Handymanoncall.com and Ameripro for the completion of the garage renovation

<sup>6</sup> Estimate from Ameripro to finish the work in the main portion of the house.

**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>7</sup> and

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

**Signature on File**

June 5, 2019  
Date Decision Issued

\_\_\_\_\_  
Michael J. Wallace  
Administrative Law Judge



MJW/da  
# 179674

<sup>7</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii); COMAR 09.08.01.20.

**PROPOSED ORDER**

***WHEREFORE, this 23<sup>rd</sup> day of July, 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.***

***Michael Shilling***

***Michael Shilling  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**