

IN THE MATTER OF THE CLAIM OF \* MARYLAND HOME  
ROUSTEM ZAINOULLINE \* IMPROVEMENT COMMISSION  
AGAINST THE MARYLAND HOME \*  
IMPROVEMENT GUARANTY FUND \* MHIC CASE NO. 20(75)818  
FOR THE ACTS OR OMISSIONS OF \* OAH CASE NO. LABOR-HIC-  
DONALD IVILL AND POTOMAC \* 02-22-19361  
RESTORATIONS, INC. \*

\* \* \* \* \*

**FINAL ORDER**

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on December 27, 2022. Following the evidentiary hearing, the ALJ issued a Proposed Decision on May 18, 2023, concluding that the homeowner, Roustem Zainoulline (“Claimant”) failed to prove that he suffered an actual loss as a result of the acts or omissions of Donald Ivill and Potomac Restoration, Inc. (collectively, “Contractor”). *ALJ Proposed Decision* p. 10. In a Proposed Order dated June 26, 2023, the Maryland Home Improvement Commission (“MHIC” or “Commission”) affirmed the Proposed Decision of the ALJ to deny the Claimant an award from the Home Improvement Guaranty Fund. The Claimant subsequently filed exceptions to the MHIC Proposed Order.

On October 5, 2023, a three-member panel (“Panel”) of the MHIC held a remote hearing on the exceptions filed in this matter. The Claimant and Contractor participated without counsel. Assistant Attorney General Jessica Kaufman appeared at the exceptions hearing on behalf of the Guaranty Fund. The Commission entered the following preliminary exhibits as part of the record of the exceptions hearing without objection: 1) hearing notice; 2) transmittal letter, ALJ Proposed Decision, and MHIC Proposed Order; and 3) Claimant’s exceptions. Neither the Claimant nor the Contractor produced a copy of the transcript of the hearing before the ALJ. Therefore, the Panel’s review of the record was limited to the preliminary exhibits for the exceptions hearing, the OAH Proposed Decision, and the exhibits offered as evidence at the OAH hearing. COMAR

09.01.03.09(G) - (I).

The claim in this proceeding relates to a contract between the parties for repairs to a residential rental property owned by the Claimant. The ALJ found that the Claimant failed to prove that the Contractor's performance under the contract was unworkmanlike, inadequate, or incomplete. *ALJ's Proposed Decision* p. 9.

On exception, the Claimant argued that the ALJ erroneously found that the Contractor's performance was not unworkmanlike, incomplete, or inadequate. The Commission finds no error. As the ALJ noted, the Claimant's property manager inspected the Contractor's work upon completion in February 2019 and deemed it to be satisfactory. Tenants moved into the property in May 2019 and made no complaints about the condition of the property upon move-in. The Claimant learned of purported deficiencies in the Contractor's performance as a result of a county rental property inspection conducted on or about July 10, 2019. The Claimant did not present any evidence that there were any deficiencies in the Contractor's performance prior to the tenants' occupancy of the Property. Accordingly, the Commission agrees with the ALJ that the Claimant failed to satisfy his burden of proof that the Contractor's performance was unworkmanlike, inadequate, or incomplete.

The Claimant also argued that the ALJ erroneously determined that he did not put his contract with the Contractor in evidence. The Claimant cited the invoice that the Contractor sent to his property management company in support of his argument. The Commission agrees with the Claimant that the invoice sets forth the basic terms, such as the price and scope of work, of the home improvement contract for the repairs performed by the Contractor on the Claimant's property. However, this error is not material to the outcome of the Claimant's claim because, as discussed above, the Claimant failed to prove that the Contractor's performance was

unworkmanlike, incomplete, or inadequate.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 25<sup>th</sup> day of October 2023, **ORDERED:**

- A. That the Findings of Fact of the Administrative Law Judge are **AMENDED**;
- B. That the Conclusions of Law of the Administrative Law Judge are **AFFIRMED**;
- C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is **AMENDED**;
- D. That the Claimant's claim is **DENIED**;
- E. That the records and publications of the Maryland Home Improvement Commission shall reflect this decision; and
- F. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

*Joseph Tunney*

**Chairperson –Panel  
Maryland Home Improvement  
Commission**

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF ROUSTEM ZAINOULLINE,</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 DONALD IVILL,</b></p> <p><b>T/A POTOMAC RESTORATIONS,</b></p> <p><b>INC.,</b></p> <p><b>RESPONDENT</b></p>	<p><b>* BEFORE MARC NACHMAN,</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><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>* OAH No.: LABOR-HIC-02-22-19361</b></p> <p><b>* MHIC No.: 20 (75) 818</b></p> <p><b>*</b></p>
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**REVISED PROPOSED DECISION<sup>1</sup>**

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 March 15, 2021, Roustem Zainoulline (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department), for reimbursement of \$435.00 for actual losses allegedly suffered as a result of a home improvement contract with Donald Ivill, trading as Potomac Restoration, Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 &

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<sup>1</sup> The Decision issued on March 22, 2023 misspelled Donald Ivill’s name . This Revised Decision is issued to correct that clerical mistake.

Supp. 2022).<sup>2</sup> On July 28, 2022, the MHIC issued a Hearing Order on the Claim. On August 9, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On December 27, 2022,<sup>3</sup> I held a hearing by video over the Webex videoconferencing platform. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1) (b). Jonathan P. Phillips, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself. 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. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); 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:

- Cl. Ex. 1 "Claim Comments," dated December 15, 2022
- Cl. Ex. 2 Photograph of door, undated
- Cl. Ex. 3 Photograph of shower head, undated
- Cl. Ex. 4 Photograph of door, undated
- Cl. Ex. 5 Invoices for services, varying dates
- Cl. Ex. 6 Photographs of:
  - a. Door before and after weatherstripping, undated
  - b. Foyer wall, before and after repairs, undated
  - c. Railing, undated

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<sup>2</sup> Unless otherwise noted, all references hereinafter to the Business Regulation Article (Bus. Reg.) are to the 2015 Replacement Volume of the Maryland Annotated Code.

<sup>3</sup> The hearing was initially scheduled for December 2, 2022, but postponed at the Claimant's request to prepare for the hearing. Due to notice issues, I found good cause and postponed the hearing until December 27, 2022, to which all of the parties agreed.

- d. Towel rack, undated
  - e. Bathroom towel rack, shower rod, loose doorknob, shower head, undated
  - f. [Withdrawn]
  - g. [Withdrawn]
  - h. [Withdrawn]
  - i. [Withdrawn]
  - j. [Withdrawn]
  - k. [Withdrawn]
  - l. [Withdrawn]
  - m. [Withdrawn]
  - n. [Withdrawn]
  - o. [Withdrawn]
- Cl. Ex. 7 Statement from Charlotte Oslund, TruBlue of Gaithersburg, dated December 13, 2022
  - Cl. Ex. 8 Respondent's invoice, dated April 4, 2019
  - Cl. Ex. 9 Respondent's invoice, dated February 14, 2019
  - Cl. Ex. 10 Respondent's invoice, dated January 23, 2019
  - Cl. Ex. 11 Realty Group Property Management, Inc., Owner Statement for March to April 2019
  - Cl. Ex. 12 Same as Resp. Ex. 1-2
  - Cl. Ex. 13 Realty Group Property Management, Inc., Owner Statement for May to June 2019
  - Cl. Ex. 14 Email between Tiara Smith and the Claimant, various dates in May and June 2019
  - Cl. Ex. 15 Emails between the Office of Consumer Protection, Montgomery County, the Claimant and the Respondent, December 3, 2019
  - Cl. Ex. 16 Email between the Claimant and the property manager, dated July 8, 2019
  - Cl. Ex. 17 Email between the Claimant and Tiara Smith, dated July 8, 2019
  - Cl. Ex. 18 "Rebuttal," dated December 19, 2022.<sup>4</sup>

I admitted the following exhibits offered by the Respondent:

- Resp. Ex. 1. Real Property Management invoice, dated February 14, 2019 (page 1 of 3)
- Resp. Ex. 2. Real Property Management invoice, dated February 14, 2019 (page 2 of 3)
- Resp. Ex. 3. Real Property Management invoice, dated February 14, 2019 (page 3 of 3)
- Resp. Ex. 4. Residential lease, dated May 8, 2019 (page 1 of 2)
- Resp. Ex. 5. Residential lease, dated May 8, 2019 (page 2 of 2)
- Resp. Ex. 6. Emails between the Claimant and the Respondent, dated October 28, 2019
- Resp. Ex. 7. Email from Respondent to Montgomery County, dated February 20, 2020
- Resp. Ex. 8. Email from Respondent to Montgomery County, dated January 13, 2020
- Resp. Ex. 9. Email between Respondent and Sharon Petzing, dated May 19, 2021
- Resp. Ex. 10. Letter from Kathy Jones, Realty Property Group, to the MHIC, dated January 24, 2020

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<sup>4</sup> After the hearing concluded, and with my approval, the Claimant emailed me and the other parties a \$242.07 invoice from Lemi's Appliance Repair LLC. The invoice was dated November 20, 2019, nine months after the Respondent's work at the property, There was little evidence to link any of the Respondent's work to this repair, particularly as the Claimant provided a used dishwasher for the Respondent to install. Nevertheless, I am including this document among the exhibits.

I admitted the following exhibits offered by the Fund:

- GF. Ex. 1 OAH Notice of Hearing, dated December 6, 2022
- GF. Ex. 2 MHIC Hearing Order, dated July 28, 2022
- GF. Ex. 3 MHIC letter to the Respondent, dated March 23, 2021, including the MHIC Claim form, received March 15, 2021
- GF. Ex. 4 Respondent's licensing information, dated November 22, 2022

Testimony

The Claimant testified and did not present other witnesses.

The Respondent testified and did not present other 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 01-116948.
2. On January 31, 2019, the Claimant and the Respondent entered into a contract to make home improvement repairs to the Claimant's rental property in Gaithersburg, Maryland (Contract).
3. The Claimant retained a property manager to manage his rental property.
4. Among the duties of the property manager was to supervise and approve the home improvement work on the rental property performed by the Respondent.
5. The Respondent's work was completed in February 2019.
6. The Claimant's property manager accepted the Respondent's work without exception.
7. The Respondent completed the work under the Contract in a workmanlike and adequate manner.

8. On May 8, 2019, the Claimant's tenants signed a one-year lease to rent the Claimant's property.
9. The tenants moved into the property on the following day.
10. The tenants accepted the property without complaint.
11. On July 10, 2019, seven weeks after the tenants moved into the property, and five months after the Respondent completed his work on the property, the Montgomery County Department of Housing and Community Affairs (DHCA) inspected the property and found several defects (e.g., weather stripping, a loose towel rack in the bathroom, a hole in the wall caused by a door knob, a loose shower head flange, and a railing pulled away from the wall).
12. The defects found by the DHCA were caused by the tenants after they moved into and lived in the property for almost two months.
13. The defects found by the DHCA were not the result of any act of or omission by the Respondent.

## **DISCUSSION**

### **Applicable law**

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); Md. Code Ann., 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).

The Respondent was a licensed home improvement contractor at the time the Respondent entered into the Contract with the Claimant. By statute, certain claimants are excluded from recovering from the Fund altogether. In this case, there are no such statutory impediments to the Claimants' recovery. The claim was timely filed, there is no pending court claim for the same



loss, and the Claimants did not recover the alleged losses from any other source. Bus. Reg §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2022). Although the Claimant does not reside in the rental property that is the subject of the claim, he does not own more than three dwellings. *Id.* § 8-405(f)(2) (Supp. 2022). The parties did not enter into a valid agreement to submit their disputes to arbitration. *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2022). 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) (Supp. 2022).

Owners 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) (Supp. 2022); *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 not proven eligibility for compensation from the Fund.

### **Analysis**

The Claimant’s testimony regarding the Respondent’s work was somewhat confusing and disorganized, as was his documentary evidence. The Contract for the home improvement work on the Claimant’s rental property was not submitted into evidence or otherwise identified, so I have no data to determine the Contract’s financial terms, promised completion date and the scope of work.

When filling out the Fund claim form, the Claimant only supplied the following four lines of information:

1. The date of the contact: January 31, 2019.
2. The date that the work was done by the Respondent: February 2019.
3. The amount of the original contract: \$5,998.00.
8. The amount paid or payable to restore, repair, replace or complete the work: \$435.00.

The Claimant did not supply the amount he paid to the Respondent (Line 6), or an estimate of the value of the work done by the Respondent (Line 7). GF Ex. 3.

The Claimant abandoned portions of his claim during the hearing, as evidenced by the photographs that were marked for identification, moved into evidence, and then withdrawn before I ruled on their admissibility. Cl. Ex 6 f through o. The Claimant later said that “maybe” he should have not withdrawn those photographs, but he did not attempt to resubmit them into evidence.<sup>5</sup>

The evidence presented by the Claimant that the Respondent’s home improvement work was unworkmanlike, inadequate, or incomplete was not probative. To the contrary, the only evidence of the completion date and condition of the work was the January 24, 2020, letter from the Claimant’s property manager, Kathy Jones, to the MHIC, stating that she “inspected the property after the work was completed. Everything was completed in (sic) satisfactory manner.”<sup>6</sup> Resp. Ex. 10.

The Claimant did not question Ms. Jones’ assessment until well after the work was completed and determined to be satisfactory, and well after the property was rented and had been occupied by tenants for a significant amount of time. The material dates can be derived from the documentary evidence. The Claimant’s tenants signed a lease agreement on May 8, 2019, agreeing to rent the property, with a move-in date of June 1, 2019. Resp. Ex. 4.

The Claimant, Ms. Jones, and the tenants exchanged emails showing that the tenants moved in early, on May 10, 2019. Cl. Ex. 14. There was no evidence that the tenants had complaints about any of the work performed by the Respondent.

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<sup>5</sup> Some of the photographs showed features that were clearly not part of the claim, such as a crawlspace that showed evidence of rodent or insect infestation precautions and a screen from a window or porch that was not addressed at the hearing.

<sup>6</sup> In her letter, Ms. Jones identified defects in the property (*i.e.*, mice infestation after the tenants moved in and an issue with the refrigerator and the HVAC unit), but none of these items were items on the Respondent’s estimate or invoices. CL Exs. 8, 9 and 10.

The Claimant explained that the alleged deficiencies in the Respondent's work were first brought to his attention after an inspection of the property conducted by the Montgomery County DHCA. The inspection report was not submitted into evidence, and the only evidence regarding the date that the DHCA inspected the property came from the Claimant's "Rebuttal," which fixed the inspection date as July 10, 2019. Cl. Ex. 18.

The timing of this inspection, which the Claimant conceded in his "Rebuttal" to have taken place "seven weeks after the [tenant's] move-in," is significant in determining when the alleged defects most likely occurred, and whether the defects could have been the result of any acts or omissions by the Respondent.

The invoice from the subsequent contractor showed that her alleged restorative work was performed in January 2020, well after the tenants moved into and had lived in the property. The contractor, Ms. Oslund's, explanation proved that the repairs were made in December 2019 and January 2020. Cl. Exs. 5 and 7. The Claimant's photographic evidence, taken by the subsequent contractor in December 2019, documented the condition of the property *ten months* after the Respondent completed his work: the alleged defects and subsequent repair where the doorknob struck the wall (Cl Ex. 6b); the place where the railing appears to have been pulled from the wall (Cl. Ex. 6c); the loose towel rack in the bathroom (Cl. Ex. 6e); and the flange that separated from the wall and slid down the pipe leading to the showerhead (Cl. Ex. 6e).<sup>7</sup>

The photograph of the door weather stripping was undated and confusing, as there was no context showing when it was taken and whether it was indeed the door on the subject property that the Respondent repaired. Cl. Ex. 6a.

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<sup>7</sup> There were no pictures evidencing the "old and rusty" light fixtures that the second contractor replaced. Cl. Ex. 7. Nor was there any evidence that the damage alleged to the "lightly used" dishwasher chosen by the Claimant was caused by the Respondent.

When the work was completed in February 2019, these items were approved by Ms. Jones on the Claimant's behalf. Accordingly, the Respondent argues that any defects, not apparent after the work was done, were more likely than not caused by the tenants who lived in the property for seven weeks before any complaints were made. I agree with the Respondent, because the damages were more likely than not to have occurred between the time that the tenants moved in (May 2019) and the DHCA inspection (July 2019), and they were not present when Ms. Jones inspected the Respondent's work on behalf of the Claimant after its completion in February 2019.

The evidence does not support the Claimant's assertion that the Respondent's work was done in an "unworkmanlike, inadequate, or incomplete" manner. Bus. Reg. § 8-401. Accordingly, I cannot recommend any Fund award.

#### **Calculating any possible Fund award**

Even if I were to consider recommending an award (which I am not), the Claimant's evidence failed to support any specific amount or justification for that award. It is difficult, if not possible, to calculate an award under the applicable regulations with the sparse amount of information provided by the Claimant. *See* COMAR 09.08.03.03B(3)(a)-(c).

Nor could the Claimant justify any amount of an award from the Fund. When making his closing argument, the Claimant was asked to quantify the amount of the actual loss he incurred. He replied, "That's a good question," and then requested a "fair amount" without any further quantification or clarification. Therefore, neither the Claimant's evidence, nor his inability to quantify an actual loss, supports an award from the Fund.

**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 & Supp. 2022).

**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.

May 18, 2023  
Date Decision Issued

*Marc Nachman*  

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Marc Nachman  
Administrative Law Judge

MN/sh  
#205174

PROPOSED ORDER

*WHEREFORE, this 26<sup>th</sup> day of June, 2023, 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.*

*Lauren Lake*

*Lauren Lake*

*Panel B*

**MARYLAND HOME IMPROVEMENT  
COMMISSION**