

IN THE MATTER OF THE CLAIM	*	BEFORE CARLTON A. CURRY,
OF RONNIE BRODSKY,	*	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 CHARLES NYARKO,	*	
ALL POINT HOME IMPROVEMENT	*	OAH No.: LABOR-HIC-02-23-05133
LLC,	*	MHIC No.: 20 (75) 921
RESPONDENT	*	

* * * * *

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 October 19, 2022, Ronnie Brodsky (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$13,485.00 for actual losses allegedly suffered as a result of a home improvement contract with Charles Nyarko,² trading as All Point Home Improvement LLC (Respondent). Md. Code

¹ The MHIC is under the jurisdiction of the Department of Labor (Department).

² The MHIC Claim Form has the name of Kwasi Nyarko. At the hearing, the Respondent clarified that his name is Charles Kwasi Nyarko and is commonly referred to by his middle name.

Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022).³ On February 3, 2023, the MHIC issued a Hearing Order on the Claim. On February 14, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On April 24, 2023, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. The Claimant was self-represented. The Respondent was self-represented.⁴ Jonathan Phillips, Assistant Attorney General, Department, represented the Fund.

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); 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 – MHIC Compliant Form and Supporting Document, January 31, 2020, containing:
- Contract between Claimant and Respondent, September 24, 2019
 - Line-by-line Assessment of Contract
 - Additional Damages and Costs
 - Legal Violations by Allpoint Home Improvement
 - Contract between Claimant and Respondent, September 24, 2019, second copy

³ Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

⁴ At the time of the hearing Schinqua L. Roberts, Esq. appearance was entered as counsel for the Respondent. OAH staff contacted Ms. Roberts as to her whereabouts, and she indicated she had not been retained by the Respondent in the matter before the OAH. Thereafter, Ms. Roberts filed a document striking her appearance. The Respondent elected to proceed without legal counsel and to represent himself.

- Proof of Payment
 - Greenleaf Construction Specification Sheet
- Clmt. Ex. 2 – MHIC Claim Form, January 16, 2022⁵
 Clmt. Ex. 3 – MHIC Claim Form Supporting Documents,
 Clmt. Ex. 4 – US Inspect Home Reinspection Report, November 2, 2019
 Clmt. Ex. 5 – Contract between Claimant and Lago Contracting, LLC, February 29, 2020
 Clmt. Ex. 6 – Lago Contracting, LLC draft contract⁶
 Clmt. Ex. 7 – Invoice from Lago Contracting, LLC, May 20, 2020
 Clmt. Ex. 8 – US Inspect Home Inspection Report, August 9, 2019
 Clmt. Ex. 9 – Photographs of joists, October 2019
 Clmt. Ex. 10 – Screenshots of text messages between Claimant and Respondent, October 21, 2019

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 – Notice of Hearing, March 2, 2023
 Fund Ex. 2 – MHIC Hearing Order, February 3, 2023
 Fund Ex. 3 – MHIC Home Improvement Claim Form, received October 19, 2022
 Fund Ex. 4 – Respondent Licensing History, April 20, 2023

I admitted no exhibits from the Respondent.⁷

Testimony

The Claimant testified and presented the testimony of Wynne Thomas Hyatt, retired home inspector. The Respondent testified and did not present other witnesses. 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 numbers 01-99144 and 05-126916, trading as All Point Home Improvement LLC.
2. The Claimant is not related to the Respondent.

⁵ Although this form is dated January 16, 2022, the Claim was received by the MHIC on October 19, 2022. See Fund Ex. 3.

⁶ The document has “43329” as the date, which does not conform to any written date schematic.

⁷ After the hearing concluded, I received, electronically from the Respondent, several photographs. These photographs were not admitted into evidence and or considered in any way but remain with the file for completeness.

3. The Claimant has not filed other claims against the Respondent outside of these proceedings.

4. The Claimant's property subject to this matter is located in Baltimore, Maryland on South Patterson Park Avenue (the Property). It is her primary residence.

5. Prior to purchasing the home, the Claimant had a home inspection performed by US Inspect, which produced a Home Inspection Report on August 9, 2019.

6. The Claimant shared the Home Inspection Report with the Respondent on September 2, 2019.

7. On September 24, 2019, the Claimant and the Respondent entered into a contract to renovate the Property (Contract). The scope of work of the Contract included:

- Remove deck and roof and install new roof and drip edge on first floor laundry room
- Install two windows in the laundry room and wrap with aluminum
- Install gutters at back of first and second floor room
- Recoat and cement deck post on second floor roof
- Demolition of second floor hallway bath and install new floor, tub wall tile, fix p-trap sink, new vanity toilet, tile, and bathroom accessories
- Move GFCI outlet
- Fix arcing switch on second floor
- Install hot water tank
- Fix 3rd floor drywall around skylight, point out any drywall on the floor
- Prime and paint ceiling, walls, doors, and trim work
- Fix living room joist and fix floorboard close to match
- Fix and replace kitchen backdoor lock
- Replace smoke detectors per code in each bedroom and each level with smoke and carbon monoxide detectors
- Fix kitchen sink plumbing and dishwasher drain line.
- Remove, reframe, and install new patio door
- Remove and relocate light in the third floor bathroom
- Point-out mortar joints in the front steps, front lower section of wall, left side and back side of house
- Install hardwood floor and molding in living room
-

- Fix third floor bathroom faucet leak
 - Install new deck and roof on first floor.
8. The original agreed-upon Contract price was \$24,305.00.
 9. The Contract stated that work would be completed by November 1, 2019.
 10. On September 24, 2019, the Claimant paid the Respondent \$14,305.00.
 11. On October 3, 2019, the Claimant contacted the Respondent concerning the quality of cement work completed at the Property.
 12. On October 11, 2019, the Claimant contacted the Respondent regarding the installation of windows on rotten wood.
 13. On October 13, 2019, the Claimant contacted the Respondent regarding poor work of mortar pointing.
 14. The Claimant again contacted the Respondent on successive days, October 17, 18 and 19, 2019, regarding paint stains on the historic brick, the use of the Claimant's personal cleaning supplies to address paint on the bricks that damaged the bricks, and concerns regarding the work performed on the joist.
 15. October 19, 2019, was the last day the Respondent performed work on the Property.
 16. Communication between the Claimant and the Respondent ceased on October 21, 2019.
 17. On November 2, 2019, US Inspect conducted a second home inspection and provided a Reinspection Report on the same date. The Reinspection Report noted deficiencies in the Respondent's work under the Contract.
 18. The Reinspection Report identified the following in repairs to the Property performed by the Respondent that were not acceptable and required corrective action:

- Deteriorated mortar joints in the siding, from wall bottom
- Cracks in the siding, left side at windows
- Second floor and first floor roof leaking, with possible interior damage
- Roof is lifted, may permit water penetration, left rear corner
- Three joists are deteriorated, basement left rear corner
- Gutters filled with debris, left side
- Interior wall water-stained and damaged in laundry room, second floor rear bedroom, and living room closet
- Evidence of moisture in interior ceiling in second floor rear bedroom and hallway, kitchen, and laundry room
- Dishwasher does not have an anti-siphon device on drain line, creating health concern
- Window caulk at trim is missing or deteriorated
- Water heater flue pipe improperly sloped, creating a safety hazard

19. The Claimant's discovery of unworkmanlike performance was continuous through November 2, 2019, the date of the Reinspection Report.

20. The Claimant contracted with the following contractors, paid for materials, or obtained estimates to perform the same work that was supposed to be provided by the Respondent, to complete the renovation of the Property:

- a. Lago Contracting, LLC, \$560.00, to repair roof installation;
- b. Pedro Martinez, HD Contractors LLC, \$500.00, to repair window installation;
- c. Lago Contracting, LLC, \$420.00, to repair dry wall surrounding windows;
- d. Lago Contracting, LLC, \$560.00, to repair gutter and downspout;
- e. Four Twelve Roofing, \$1,816.95, to recoat and cement deck post on second floor roof (estimate);
- f. Lago Contracting, LLC, \$5,450.00, to complete second floor bathroom renovation;
- g. A. Johnson, \$225.00, to perform plumbing in second floor bathroom;
- h. Claimant paid to Home Depot \$223.00, for material for second floor bathroom;
- i. Advanced Plumbing, LLC, \$175.00, to perform plumbing in second floor bathroom;

- j. Lago Contracting, LLC, \$140.00, to install toilet in second floor bathroom;
- k. Caton's Plumbing and Drain, \$1,507.73, to reinstall hot water heater;
- l. Lago Contracting, LLC, \$70.00, to fix arcing switch on second floor;
- m. Lago Contracting, LLC, \$1,120.00, to fix third floor drywall and to paint;
- n. Detailz Construction Company, \$2,500.00 to clean and repair third floor brick (estimate);
- o. Lago Contracting, LLC, \$1,120.00, to repair joists and fix floorboard;
- p. Claimant paid to Home Depot, \$869.48, for materials related to joist repair;
- q. 24/7 Locksmith Service, \$140.00, to replace locks after Respondent did not return keys;
- r. Lago Contracting, LLC, \$140.00, to secure meter box to wall and fix outlets;
- s. \$100.00, to replace smoke and carbon monoxide detectors, based on Respondent's estimate;
- t. \$545.00, to complete kitchen sink plumbing and dishwasher line, based on Respondent's estimate;
- u. Lago Contracting, LLC, \$210.00, to reframe and install new patio doors;
- v. Lago Contracting, LLC, \$1,120.00, to point exterior mortar joints (estimate);
- w. Lago Contracting, LLC, \$85.00, to fix third floor bathroom faucet;
- x. Lago Contracting, LLC, \$560.00, to correct deck rails;
- y. Claimant paid to Home Depot, \$895.70, for materials for new deck railing;
- z. Lago Contracting, LLC, \$1,120.00, to install living room molding (estimate);
- aa. Lago Contracting, LLC, \$120.00, to fix basement door and door to second and third floors;
- bb. Advanced Plumbing, LLC, \$160.00, to install toilet in first floor bathroom;
- cc. Lago Contracting, LLC, \$840.00, to remove all construction debris; and
- dd. US Inspect, \$200.00, to reinspect the Property.

21. On a date not clear in the record, the Respondent sent a demand letter to the Claimant for monies he believed were owed under the Contract.

22. The Claimant filed a claim with the MHIC on October 19, 2022.

DISCUSSION

Legal Framework

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; 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) (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.

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) (2015 & Supp. 2022). 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) (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).

Position of the Parties

The Claimant asserts that the work performed by the Respondent, through his subcontractors, was unworkmanlike, inadequate, and unsafe, causing her to move out of her home for a period of time and requiring Claimant to hire another contractor to repair and complete the Respondent's work. The Claimant also asserts that there was poor communication between her and the Claimant, which exacerbated issues regarding the Contract.

The Respondent argues that the work was performed to standard, and that if there were any deficiencies, the Claimant did not communicate the issues to him, and he was not given the opportunity to remedy the situation. The Respondent asserts that the Claimant only filed a claim after he sent a demand letter for payment of the work performed.

The Fund's position is that the Claimant established that Respondent performed unworkmanlike, inadequate, or incomplete home improvements and is entitled to an award.

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

Statute of Limitations

A claim shall be brought against the Guaranty Fund within three years after the claimant discovered or, by use of ordinary diligence, should have discovered the loss or damage. Bus. Reg. § 8-405(g); *see also* COMAR 09.08.03.02G. Under the "discovery rule" or "inquiry notice," a statute of limitations like section 8-405(g) of the Business Regulation Article begins to run when a person gains knowledge of facts sufficient to put a person of ordinary prudence on inquiry to make an investigation into the possibility of defective work. *Lumsden v. Design Tech Builders, Inc.*, 358 Md. 435, 444-447 (2000) (the clock for a statute of limitations based on the

“discovered or should have discovered” date begins to run when a claimant gains knowledge of facts sufficient to put him on “inquiry notice”); *Poffenberger v. Risser*, 290 Md. 631 (1981).

The Claimant testified she terminated the Contract with the Respondent on October 19, 2019. The Fund received the Claimant’s Claim Form on October 19, 2022. At the hearing, the Fund acknowledged that the Claim was timely filed, asserting the Claimant filed the Claim on the last possible day. The Respondent made no argument regarding the statute of limitations for the Claim. I agree with the Fund that the Claimant timely filed. However, I disagree with what date the statute of limitations applies. Much of the work contracted to be performed by the Respondent was based on the August 9, 2019 home inspection; after terminating the Contract, the Claimant scheduled a home reinspection on November 2, 2019. It was reasonable and prudent for the Claimant to have the Property reinspected, and November 19, 2019 reinspection and Reinspection Report provided sufficient facts about the possibility of defective work. Consequently, the applicable date for the statute of limitations is November 2, 2019.

Unworkmanlike, Inadequate, or Incomplete Home Improvement

From the beginning of the project, there was frequent communication from the Claimant to the Respondent concerning the quality of the work performed and the condition the property was left in each day. During the hearing, it was evident that during the Respondent’s performance of the Contract, the Claimant was quickly dissatisfied and distrustful of the work. The Claimant testified that beginning on October 3, 2019, she communicated her concern regarding the quality of cement work performed and the leaking plumbing. On October 11, 2019, the Claimant contacted the Respondent regarding the installation of windows atop rotten wood, and on October 15, 2019, she informed the Respondent that her drains were clogged due to paint being poured in them. On successive days from October 17, 2019 to October 19, 2019, the Claimant contacted the Respondent regarding paint stains on the Property’s historic brick,

paint on the floors, and the quality joist work performed. The Respondent's last day at the Property was October 19, 2019.

The Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2022). The Claimant texted messaged the Respondent to cease work at the property and on October 21, 2019, the Respondent replied, "Gm I did get ur msg and I am very ok with that but I do have a balance in the work that is done and will want my money today." Clmt. Ex. 10. There is no competent evidence that the Respondent satisfactorily corrected or repaired the work.

The Claimant offered the testimony of Wynne Thomas Hyatt, a retired licensed home inspector with 20 years of professional experience. Mr. Hyatt conducted the home inspections on August 9, 2019 and November 2, 2019, and produced reports detailing his findings. Clmt. Exs. 4 and 8. In performing the home reinspection on November 9, 2019, Mr. Hyatt testified that he referred back to the August 9, 2019 report and that his findings were to a reasonable degree of professional certainty. Based on the meticulous details in the reports, coupled with the professional experience, I give full weight to Mr. Hyatt's testimony and observations documented in the reports.

The Reinspection Report noted fifteen instances where the Respondent failed to repair items identified in the initial report or found the repairs unacceptable. Mr. Hyatt testified consistently with the Reinspection Report that the hot water heater was improperly installed and posed a safety hazard in that the "water heater's exhaust flue pipe is improperly sloped, which may permit exhaust gases to enter the living areas." Clmt. Ex. 4, pg. 9. The Respondent argues that the hot water heater was a temporary installation, pending purchase of a hot water heater more suitable for the area. This response is unacceptable; even if a temporary installation, the hot water heater must be properly installed. The unworkmanlike installation caused the Claimant

to leave the Property out of safety concern until proper reinstallation by a plumber, at additional costs.

Under the Contract, the Respondent was to repair or replace joists that support the living room. The Respondent argued that the joist work was not complete at the time the Contract was terminated. Mr. Hyatt testified that two of the three joists were adequately repaired, but also testified that one of the original joists was not resting on the foundation wall and that removal of the sistered joist was necessary. In the Reinspection Report, Mr. Hyatt commented that the [s]istered joists are undersized and not properly nailed or bolted to the existing joists," and his testimony was consistent with Reinspection Report. Clmt. Ex. 4, pp. 12, 9.

At the hearing, the Respondent acknowledged he was "very uncomfortable" working for the Claimant, but addressed any issue that arose. The Respondent acknowledged that he installed two windows on rotten wood, and when the Claimant commented on the work, the Respondent replaced it with wood "out of pocket," which I understood to be at no additional cost to the Claimant. The window repair was noted as unacceptable in the Reinspection Report. It is clear from photographs in evidence that even with the Respondent's "out-of-pocket" repairs, the was inadequate and incomplete. Clmt Ex. 4, pg. 13. There were significant gaps at the top of the window, with no caulking, which would allow moisture and wind into the Property.

The Respondent further testified that he completed the painting, roof work, and demolition under the Contract, and is entitled to compensation for the work performed. I do not find the argument persuasive. Mr. Hyatt's Reinspection Report provides clear findings of deficiencies and recommendations that a contractor be hired to repair them. Mr. Hyatt's findings are fully supported by photographs in evidence.

The Fund argues that the Claimant has met her burden of proof that she is entitled to an award from the Fund. According to the Fund, the Claimant proved that she suffered an actual

monetary loss as a result of unworkmanlike, inadequate, or incomplete home improvement work performed by the Respondent. The Fund is convinced that the Respondent failed to adequately perform home improvements at the Property in a workmanlike, adequate, and complete manner under the Contract.

I agree with the Fund. Accordingly, I conclude that the Respondent's work was unworkmanlike, inadequate, and incomplete, and the Claimant is eligible for compensation from the fund for any actual loss attributable to that unworkmanlike, inadequate, and incomplete work.

Award

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. 2022); 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 matter, Respondent performed some work under the Contract, and the Claimant retained other contractors to complete or 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).

To repair and complete the work of the Respondent, the Claimant used several entities and purchased supplies herself. As more fully broken down in the Finding of Facts, inclusive of a contract, invoices, estimates from Lago Contracting, LLC; invoices from Advanced Plumbing A. Johnson; Pedro Martinez and Caton's Plumbing and Drain; receipts from Home Depot and US Inspect; and estimates from Detailz Construction Company and Four Twelve Roofing, all totaling \$23,492.86.⁸ Clmt. Exs. 3, 4, and 6. Based upon definitions of actual loss, the \$200.00 cost of the home reinspection will be excluded from the \$23,492.86 amount.

Using the formula in COMAR 09.08.03.03B(3)(c), the following calculations apply:

Amount the Claimant paid to the Respondent	\$ 14,305.00
Amount the Claimant paid/will pay to complete the work	+\$ 23,292.86
	\$ 37,597.86
Minus Contract Price	<u>-\$ 24,305.00</u>
Actual loss	\$ 13,292.86

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.⁹ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss is less than the amount paid to the Respondent and less than \$30,000.00. Therefore, the Claimant is entitled to recover her actual loss of \$13,292.86.

⁸ Clmt. Ex. 3 has a total projected outlay of \$23,485.00, however, no standard rounding of the numbers could achieve that dollar amount.

⁹ 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 \$13,285.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2022); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover that amount from the Fund. *Id.*

RECOMMENDED ORDER

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

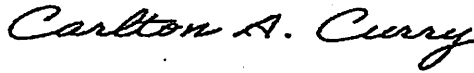
ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$13,292.86; and

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;¹⁰ and

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

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

July 21, 2023
Date Decision Issued



Carlton A. Curry
Administrative Law Judge

CAC/emh
#206186

¹⁰ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 14th day of September, 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.

Chandler Louden

Chandler Louden

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***

IN THE MATTER OF THE CLAIM OF * MARYLAND HOME
RONNIE BRODSKY * IMPROVEMENT COMMISSION
AGAINST THE MARYLAND HOME *
IMPROVEMENT GUARANTY FUND * MHIC CASE NO. 20(75)921
FOR THE ACTS OR OMISSIONS OF * OAH CASE NO. LABOR-HIC-
CHARLES NYARKO AND ALL * 02-23-05133
POINT HOME IMPROVEMENT, LLC *

* * * * *

FINAL ORDER

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on April 24, 2023. Following the evidentiary hearing, the ALJ issued a Proposed Decision on July 21, 2023, concluding that the homeowner, Ronnie Brodsky (“Claimant”) suffered an actual loss as a result of the acts or omissions of Charles Nyarko and All Point Home Improvement, LLC (collectively, “Contractor”). *ALJ Proposed Decision* p. 15. In a Proposed Order dated September 14, 2023, the Maryland Home Improvement Commission (“MHIC” or “Commission”) affirmed the Proposed Decision of the ALJ to grant an award of \$13,292.36 from the Home Improvement Guaranty Fund. The Contractor subsequently filed exceptions to the MHIC Proposed Order.

On April 4, 2024, a three-member panel (“Panel”) of the MHIC held a remote hearing on the exceptions filed in this matter. The Contractor participated without counsel. Donna Berdych, Esq., represented the Claimant. Assistant Attorney General Hope Sachs 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) Contractor’s exceptions. Neither the Claimant nor the Contractor produced a copy of the transcript of the hearing before the ALJ. The Contractor requested leave to present new evidence, but failed to demonstrate that the proposed new evidence was not discovered before the ALJ hearing as required

by COMAR 09.01.03.09.K. 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 admitted 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 the renovation at the Claimant's home. The ALJ found that the Contractor's performance under the contract was unworkmanlike, incomplete, and inadequate. *ALJ's Proposed Decision* p. 13.

Although the parties did not raise this issue, the Commission finds that the ALJ erred in finding that the three-year limitations period prescribed by *Md Code Ann.*, Bus. Reg. ("BR") § 8-405(g) began to run on November 2, 2019, when the Claimant had a home inspector conduct an inspection of her home.

BR § 8-405(g) requires that a Guaranty Fund claim "be brought against the Fund within 3 years after the claimant discovered or, by use of ordinary diligence, should have discovered the loss or damage." It codifies the Maryland discovery rule, under which "limitations begin to run when a claimant gains knowledge sufficient to put her on inquiry. As of that date, she is charged with knowledge of facts that would have been disclosed by a reasonably diligent investigation. The beginning of limitations is not postponed until the end of an additional period deemed reasonable for making the investigation. ...'" *Lumsden v. Design Tech Builders, Inc.*, 358 Md. 435, 445 (2000) (quoting *O'Hara v. Kovens*, 305 Md. 280, 289 (1986)).

In this case, the ALJ erroneously postponed the commencement of the limitations period until the Claimant had a home inspector inspect the Contractor's work, rather than when the Claimant discovered deficiencies in the Contractor's performance that put her on inquiry. The Commission finds that the limitations period began to run with respect to the cement work performed by the Contractor on the Claimant's deck on or before October 3, 2019, when the

Claimant complained to the Contractor about the quality of that work. The Commission finds that the limitations period began to run with respect to the windows installed by the Contractor on or before October 11, 2019, when the Claimant complained to the Contractor about the quality of his window installation. The Commission finds that the limitations period began to run with respect to the mortar pointing performed by the Contractor on or before October 13, 2019, when the Claimant complained to the Contractor about the quality of his mortar pointing work. The Commission finds that the limitations period began to run with respect to the remaining components of her claim on October 19, 2019, when the Claimant complained to the Contractor about the quality of his joist repair work and terminated the Contractor, at which point she had actual knowledge of deficiencies in the joist repair and actual knowledge that any work outstanding under the contract was incomplete.

Accordingly, the Commission holds that the Claimant's October 19, 2022, claim was untimely with respect to the cement work, window installation, and mortar pointing because it was filed more than three years after she discovered deficiencies in the Contractor's performance of those items.

Also, while again not raised by the parties, the Commission finds that the ALJ erred in considering consequential damages when calculating the Claimant's award. BR § 8-405(e)(3) prohibits the award of any amount for consequential damages. The Commission finds that the Claimant's \$2,500 cost to correct damage that the Contractor caused to the masonry in the third floor of the Claimant's home by splattering paint on it is a consequential damage because the finishing of the masonry was not within the scope of the parties' contract. Therefore, that cost are not compensable by the Fund. Moreover, even if the Claimant timely filed her claim with respect to the damage to the third floor masonry, the Commission ALJ erred in finding that the Claimant

would incur a cost of \$2,500 to restore the damaged masonry. The Commission finds that the Claimant failed to prove the cost to restore the masonry because the only evidence she presented was an email from a Detailz Construction Corporation representative who had not visited the Claimant's home advising that the company may or may not be able to repair the damage, that he was "not entirely sure we're going to be an economical company for a really small project like this," and that "[w]e typically have a \$2,500 masonry minimum."

The Contractor argued that the ALJ erred by considering items in the Lago Contracting, LLC ("Lago") corrective contract that were beyond the scope of the original contract. The Commission agrees. The ALJ found that the Claimant paid Lago \$5,450 to correct and complete the renovation of the second floor bathroom in Proposed Finding of Fact 20(f). However, the Lago contract included several items in the second floor bathroom category that were not included in the original contract, including "point up and paint" for \$560, "baseboard/trim" for \$280, replacing a light fixture on the third floor for \$70, installing exhaust fans for \$280, and installing a tub surround with a recessed box for \$840. In addition, even if the foregoing line items were within the scope of the original contract, the \$5,450 cost the ALJ attributed to Lago's renovation of the second floor bathroom exceeded the total cost of the line items in the second floor bathroom category of the Lago contract. The Commission finds that the cost incurred by the Claimant to have Lago correct and complete the Contractor's renovation of the second floor bathroom was \$3,080, which includes \$560 for installing the flooring, \$280 for installing the vanity and faucet, \$140 to install the toilet, \$140 to install accessories, \$140 to install the mirror, \$140 to install the vanity light fixture, and \$140 to install the GFCI outlet. The ALJ also apparently erroneously separately considered Lago's \$140 installation of the second floor bathroom toilet in Proposed Finding of Fact 20(j) in addition to including it in the cost of the second floor bathroom renovation

in Proposed Finding of Fact 20(f).¹

The Contractor also argued on exception that the ALJ erred in considering the cost the Claimant incurred to repair his window installation because he replaced the rotten wood around the windows after the Claimant first complained about the windows. Although this issue is not pertinent to the amount of the Claimant's actual loss because the Claimant's claim regarding the windows was untimely, the Commission notes that the corrective work performed on the windows related to gaps around the windows installed by the Contractor and the Contractor's failure to caulk the windows. Therefore, had the Claimant's claim regarding the windows been timely, the ALJ's consideration of the Claimant's cost to correct the window installation would have been proper despite his replacement of the rotten wood.

After excluding the Claimant's untimely claims, consequential damages, and the work Lago performed that was beyond the scope of the parties' contract, the Commission calculates the Claimant's award using the formula prescribed in COMAR 09.08.03.03B(3)(c) as follows:

Amount the Claimant paid to the Contractor	\$14,305.00
Cost to Correct and Complete the Contract	<u>+\$14,845.91</u>
	\$29,150.91
Original Contract Price	<u>-\$24,305.00</u>
Compensable Actual Loss	\$4,845.91

Having considered the parties' arguments, the evidence contained in the record, and the

¹ I is not clear to the Commission what line items the ALJ included in the \$5,450 the ALJ attributed to Lago's correction and completion of the second floor bathroom remodel because \$5,450 was more than the sum of the prices for the line items in that category set forth in the parties contract.

ALJ's Recommended Decision, it is this 30th day of April 2024, **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 **AMENDED**;
- C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is **AMENDED**;
- D. That the Claimant is awarded \$4,845.91 from the Maryland Home Improvement Guaranty Fund;
- E. That the Contractor shall remain ineligible for a Maryland Home Improvement Commission license until the Contractor reimburses the Guaranty Fund for all monies disbursed under this Order plus annual interest of at least ten percent (10%) as set by the Commission, *Md Code Ann.*, Bus. Reg. §§ 8-410(a)(1)(iii), 8-411(a);
- F. That the records and publications of the Maryland Home Improvement Commission shall reflect this decision; and
- G. 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**