

<p>IN THE MATTER OF THE CLAIM</p> <p>OF LINETTE BROWN,</p> <p>CLAIMANT</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF GARRY HERBERT</p> <p>LAVENSTEIN, DECEASED,</p> <p>F/T/A ALL AMERICAN WINDOWS &</p> <p>SIDING, INC.</p> <p>RESPONDENT</p>	<p>* BEFORE ROBERT B. LEVIN,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: LABOR-HIC-02-24-07667</p> <p>* MHIC No.: 22 (75) 366</p> <p>*</p> <p>*</p>
---	--

* * * * *

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 June 10, 2022, Linette Brown (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$106,000.00 for actual losses allegedly suffered as a result of a home improvement contract with Garry Herbert Lavenstein, deceased, formerly trading as All American Windows & Siding, Inc.

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

(Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2024).² On March 18, 2024, the MHIC issued a Hearing Order on the Claim. On March 18, 2024, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On September 9, 2024, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Catherine Villareale, Assistant Attorney General, Department, represented the Fund. George E. Golomb, Esquire, represented the Claimant, who was present.³

After waiting fifteen minutes for any representative of the Respondent, who is deceased, or of his estate to appear, I proceeded with the hearing. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. Code of Maryland Regulations (COMAR) 28.02.01.23A. On June 25, 2024, the OAH provided a Notice of Hearing (Notice) to Michelle Lavenstein, Personal Representative of the Estate of Garry Herbert Lavenstein, Respondent, 29 Mill Street, Stewartstown, PA 17363, by certified mail and first-class mail.⁴ Bus. Reg §§ 8-312(d), 8-407(a); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for Monday, September 9, 2024, at 9:30 a.m., at the OAH, 11101 Gilroy Road, Hunt Valley, Maryland. COMAR 09.08.03.03A(2). The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

The United States Postal Service (USPS) returned the Notice sent by certified mail to Ms. Lavenstein, the Personal Representative of the Respondent's Estate. The USPS did *not* return the

² Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Volume of the Maryland Annotated Code.

³ The hearing was originally scheduled for June 15, 2024. No one appeared on behalf of the Respondent or his estate. The Claimant had planned to be represented by her daughter, who is not an attorney. Her daughter stated that the Claimant was not prepared to represent herself due to a medical diagnosis. I continued the June 15, 2024 hearing so an attorney could be engaged. Mr. Golomb subsequently entered his appearance for the Claimant.

⁴ The MHIC's March 18, 2024 Transmittal of this case to the OAH identified Michelle Lavenstein as the Personal Representative of the Estate of the Respondent, Garry Lavenstein, and provided her address in Stewartstown, Pennsylvania to which the Notice of Hearing for the September 9, 2024 hearing was mailed.

Notice sent by first-class mail to Ms. Lavenstein. I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter. COMAR 28.02.01.05.

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 & Supp. 2024); 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 - Document titled "Timeline of Linette Brown's Case," undated⁵
- Clmt. Ex. 2 - Farmers Property check payable to Platinum Emergency Services and Linette Brown, in the amount of \$7,205.08, 9/12/20
- Clmt. Ex. 3 - Packet of seventeen pages of photographs, marked Front Gate Photos, Front Porch Photos, House Back & Sides Photos, and Electrical Photos, undated
- Clmt. Ex. 4 - Mobile Mini invoice, 10/27/20
- Clmt. Ex. 5 - Proposal from America Restorations, LLC (America Restorations) to the Complainant in the amount of \$11,500.00, undated
- Clmt. Ex. 6A - Contract between the Claimant and the Respondent, 2/23/21
- Clmt. Ex. 6B - Complaint Form, 9/24/23
- Clmt. Ex. 6C - Excerpt from Baltimore City Department of Housing and Community Development, 2/10/23

⁵ The Appellant's daughter prepared the timeline.

Clmt. Ex. 6D - Response to Complaint, undated

Clmt. Ex. 6F-N - Photographs, undated⁶

Clmt. Ex. 7 - Proposal from American Restorations to the Complainant in the amount of \$115,000.00 for first phase, and \$220,000.00 for final phase⁷

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Home Improvement Claim Form, 6/7/22

Fund Ex. 2 - Hearing Order, March 18, 2024

Fund Ex. 3 - Notice of Hearing for 9/9/24 hearing, 6/25/24

Fund Ex. 4 - Certification of Custodian of Records or other Qualified Individual, 3/16/24

Testimony

The Claimant testified and presented the testimony of her two daughters, Crystal Brown and Cheryl Smith. No one presented any witness testimony or other evidence on the Respondent's behalf. The Fund did not present witness 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 individual MHIC license number 01-22277 and corporate license number 05-24550.

2. On July 25, 2019, the Claimant's residential property at 4011 Kathland Avenue, Baltimore, Maryland, was extensively damaged in a fire.

3. On or about February 23, 2021, the Claimant entered into a contract (Contract) with the Respondent for fire damage restoration work, for the total price of \$231,000.00.

⁶ No Exhibit 6E was offered by the Claimant

⁷ Clmt. Ex. 7 revised the American Restorations proposal that was previously admitted as Clmt. Ex. 5. Clmt. Ex. 7 contained the following two revisions: (a) to correct a typographical error, the \$11,500.00 price in Clmt. Ex. 5 was changed to the correct price of \$115,000.00 in Clmt. Ex. 7 for the first phase of the project as described in Clmt. Ex. 7; and (b) Clmt. Ex. 7 added an estimate for completing the final phases of the project for an additional \$220,000.00.

4. The Contract provided that the Respondent would perform the following repairs and related work items, including:

- removing debris from the fire;
- taking down all wall and ceiling paneling;
- repairing plaster walls; furnishing and installing sheetrock to all walls and ceilings on the first through third floors;
- replacing moldings as needed;
- painting the walls, ceilings, and trim, repair and sand the floors;
- install carpeting;
- furnish and install two new HVAC units for the first, second, and third floors;
- bring electrical outlets and switches to code;
- bring all plumbing lines to code;
- removing existing kitchen cabinets;
- furnishing and installing new kitchen cabinets, granite countertops, sinks and kitchen appliances;
- remodeling second and third floor bathrooms;
- installing new first floor powder room; repairing and reconstructing first floor laundry room;
- install new washer and dryer;
- install new dual-glaze windows;
- repair affected areas of roof;
- supplying all necessary permits;
- replacing front of chain link fence with wood stockade fence and gate;

- repairing affected areas of siding on rear of house; and
- removal of all created debris from property.

5. The Contract was to be performed under a three-phase draw schedule. On or about April 1, 2020, the Claimant paid the Respondent Draw #1, which the Contract described as a deposit, in the amount of \$77,000.00, before work started.

6. The Contract provided that the Draw #2 and Draw #3 payments would be due before the start of work under the second and third phases of the project respectively.

7. The work and materials called for in the first phase of the project were: the demolition and removal of wall paneling, ceilings and carpet, dumpster rental, installation of the new HVAC systems and electrical work, installation of three exterior doors to the front, kitchen, and basement, and shoring up the first floor front and side porches per code, with pressure-treated wood decking, and replace the front porch steps and railing.

8. The second phase of the project, for which Draw #2 would apply, involved installation of windows, repairs to laundry room and interior walls, painting walls and ceiling, refinish floors, installation of carpeting, and repair/replace plumbing lines to code.

9. The third phase of the project, for which Draw #3 would apply, involved furnishing and installation of vinyl tile kitchen flooring, kitchen cabinets, countertops, sink, appliances to kitchen and laundry room, remodeling of two bathrooms and powder room, and removal of debris and dumpster from the property.

10. The Respondent estimated the work under the Contract would be completed in five to six months.

11. The Respondent began work on the first phase of the Contract pursuant to Draw #1, but by June 2020 no work was being done.

12. The Respondent's work on the first phase was unworkmanlike, inadequate, and incomplete, in that:

- the new porch was not built according to safety codes,
- two poles used for support were unsafe and unstable,
- hazardous trash was placed under the porch,
- under the new wood used for the porch was an extremely large amount of mold spores,
- dumpsters with hazardous materials and trash were left around the yard,
- the front porch entrance and side were not leveled,
- the front fencing was improperly installed because the entire fence was backwards and uneven;
- the Respondent used unsafe burnt wood to attach new plywood on the first-floor laundry room area and the second-floor bedroom,
- the wood was rotten and unstable, siding was placed over burnt wood in the back of the house, and siding color did not match, and
- the roof was not replaced or repaired.

13. The Respondent did not correct the deficient work.

14. In or about August 2021, the Respondent requested that the Claimant pay him more money if the work was to continue.

15. In August 2021, the Claimant instructed the Respondent to stop work.

16. On June 10, 2022, the Claimant filed her Claim with the MHIC.

17. The Respondent passed away on or about September 1, 2023.

18. As stated in the proposal provided by American Restorations, an MHIC-licensed contractor, to the Claimant, the cost to correct and complete the Respondent's deficient work on the first phase only of the project is \$115,000.00.

19. As further stated in American Restorations' proposal, the additional cost to perform the second and third phases of the project is \$220,000.00.

DISCUSSION

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 (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).

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. 2024); *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 proven eligibility for compensation.

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 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.

2024). 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. 2024). 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. 2024). 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. 2024).

The Claimant did unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2024). The record contains no evidence of such good faith efforts by the Respondent.

The Respondent performed unworkmanlike, inadequate, or incomplete home improvements. The testimony of the Claimant and her two daughters, as well as numerous photos and the analysis of the project by American Restorations in its proposal establishes that the Respondent's work was unworkmanlike, inadequate, and incomplete. Notably, new wood was put on top of the old, burnt wood, the porch was built in an uneven, unsafe, and unstable manner, hazardous material and debris under the porch and in the house's interior was not cleared out, and the roof was not repaired.⁸

I thus 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. Bus. Reg. § 8-405(e)(3) (Supp. 2024); COMAR 09.08.03.03B(1).⁹

⁸ Clmt. Ex. 6D is an undated, unsigned response of the Respondent or his agent to the Claimant's complaint, stating that the Respondent was entitled to additional payments for mold remediation, a matter outside the express scope of the Contract before doing more work. Regardless, the response did not rebut the Claimant's substantial showing that the Respondent's work on the first contract phase for which she paid \$77,000.00 was unworkmanlike, inadequate, and incomplete.

⁹ As a result, I do not recommend an award for any of the following items of consequential damages that were mentioned in the hearing: the Claimant's apartment rental, storage unit rental, and lawn maintenance.

MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

Here, the Respondent performed some work under the Contract, and the Claimant intends to retain 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).

Application of this formula is straightforward. The original Contract price was \$231,000.00. The Claimant paid \$77,000.00 to the Respondent. The cost to correct and complete the work called for under her Contract with the Respondent is \$335,000.00, comprised of \$115,000.00 to correct and complete the first phase of the project, and an additional \$220,000.00 to complete the second and third phases of the project. Adding \$335,000.00 to \$77,000.00 yields \$412,000.00. Subtracting \$231,000.00 from \$412,000.00 results in actual damages of \$181,000.00.

Effective July 1, 2022, however, 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.¹⁰ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2024); COMAR

¹⁰ 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").

09.08.03.03B(4). In this case, the Claimant's actual loss of \$181,000.00 exceeds \$30,000.00. Therefore, the Claimant's recovery is limited to \$30,000.00.

The Fund recommended a \$30,000.00 maximum award pursuant to the COMAR 09.08.03.03B(3)(c) formula, as limited by the statutory \$30,000.00 cap. I agree with the Fund, and also recommend a \$30,000.00 award.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$30,000.00 as a result of the Respondent's acts or omissions. I further conclude that the Claimant is entitled to recover that amount. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2024); COMAR 09.08.03.03B(3)(c).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$30,000.00; 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;¹¹ and

¹¹ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

ORDER that the records and publications of the Maryland Home Improvement

Commission reflect this decision.

November 25, 2024
Date Decision Issued

Robert B. Levin
Robert B. Levin
Administrative Law Judge

RBL/at
#215105

PROPOSED ORDER

WHEREFORE, this 16th day of April, 2025, 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.

Wm. Bruce

Quackenbush

Wm. Bruce Quackenbush

Chairman

Panel B

**MARYLAND HOME IMPROVEMENT
COMMISSION**