IN THE MATTER OF THE CLAIM	*	**BEFORE WILLIS GUNTHER BAKER,**
OF MARK BREITENBACH,	*	**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 HENRY TWIST, JR.,	*	
T/A HCT HOME REMODELING,	*	**OAH No.: LABOR-HIC-02-22-08912**
LLC,	*	**MHIC No.: 22 (75) 797**
RESPONDENT	*	

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PROPOSED DECISION

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STATEMENT OF THE CASE

On March 23, 2022, Mark Breitenbach[1] (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 $10,000.00 for actual losses allegedly suffered as a result of a home improvement contract with Henry Twist, Jr.

[1] The MHIC spelled the Claimant's name wrong in the Order and transmittal, omitting the "r." This is the correct spelling.

trading as HCT Home Remodeling, LLC (Respondent).[2] Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015).[3] On April 15, 2022, the MHIC issued a Hearing Order on the Claim. On April 18, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On August 17, 2022, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Nicholas Sokolow, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself. Neither the Respondent's Representative nor his attorney, Anthony J. DiPaula, Esquire, appeared at the hearing. Mr. DiPaula's office contacted the OAH on August 15, 2022 via email to alert the OAH that neither the Respondent's Representative nor his attorney would be attending the hearing. The OAH clerk telephoned Mr. DiPaula's office and advised that the hearing would proceed in their absence.

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 10, 2022, the OAH provided a Notice of Hearing (Notice) to the Respondent's Representative and his attorney by United States certified mail to their addresses on record with the OAH, and the green receipt cards were returned to the OAH. COMAR 09.08.03.03A(2); COMAR 28.02.01.05C(1).

The Notice stated that a hearing was scheduled for August 17, 2022 at 9:30 a.m., at the OAH in Hunt Valley, Maryland. The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you." The Respondent made no request for postponement prior to the date of the hearing. COMAR 28.02.01.16. I determined that the

[2] Mr. Twist tragically passed away on October 25, 2021 shortly after the contract at issue was created. The Respondent's Personal Representative Robert M. Twist and the Respondent's attorney, Anthony J. DiPaula, Esquire, received notices and participated in the prehearing process on the Respondent's behalf.
[3] Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

Respondent received proper notice, and I proceeded to hear the captioned matter. COMAR 28.02.01.05A, C.

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; and 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 - Kitchen renovation contract between the parties, October 10, 2021

Clmt. Ex. 2 - Text messages between the parties, October 11 and 12, 2021

Clmt. Ex. 3 - Copy of cancelled check #101, October 11, 2021

Clmt. Ex. 4 - Tower Federal Credit Union Statement, October 31, 2021

Clmt. Ex. 5 - Text messages between the parties, October 18 to 24, 2021

Clmt. Ex. 6 - Obituary for Henry Charles Twist, Jr., October 2021

Clmt. Ex. 7 - Cornerstone Remodeling , LLC Contract, January 10, 2022

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - OAH Notice of Hearing, June 10, 2022

Fund Ex. 2 - MHIC Hearing Order, April 15, 2022

Fund Ex. 3 - Respondent's MHIC Licensing records, printed May 5, 2022

Fund Ex. 4 - MHIC correspondence to the Respondent advising of claim and enclosing a copy of the claim (Claim), April 4, 2022

The Respondent did not submit any exhibits.

Testimony

The Claimant testified and did not present other witnesses.

Neither the Respondent nor the Fund presented 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 the MHIC.

2. On October 10, 2021, the Claimant and the Respondent entered into a contract to completely demo and remodel the Claimant's kitchen (Contract).

3. The original agreed-upon Contract price was $71,992.00.

4. On October 11, 2021, the Claimant paid the Respondent $10,000.00.

5. On October 25, 2021, the Respondent passed away without beginning any work at the Claimant's home.

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); 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 Cty. 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); *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.

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). 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). The parties did not enter into a valid agreement to submit their disputes to arbitration. *Id.* §§ 8-405(c), 8-408(b)(3). 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).

The Respondent did not perform any work at the Claimant's home and abandoned the job. While it was not the Respondent's intention that he would be unable to do the work, his untimely death made it impossible, resulting in an incomplete home improvement. The Respondent's LLC may have had assets, but the Representatives were unable or unwilling to refund the Claimant his deposit. It was the Claimant's understanding that the initial funds he paid were used to order a window and other items that had a long lead time. He believed that the items had been ordered with the funds, but he never received them. These failures to do work, refund the deposit money, or provide the items that were purchased with the funds, constitute acts or omissions by the Respondent resulting in an actual loss to the Claimant. 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); 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. COMAR 09.08.03.03B(3). I find that the first formula is applicable to this case.

The Respondent abandoned the Contract without doing any work. Accordingly, the following formula appropriately measures the Claimant's actual loss: "If the contractor abandoned the contract without doing any work, the claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract." COMAR 09.08.03.03B(3)(a).

The Claimant paid the Respondent $10,000.00 and received nothing in return, as the contract was abandoned through the Respondent's untimely death. Therefore, the Claimant's actual loss is $10,000.00 and is compensable by the Fund.

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.[4] In this case, the Claimant's actual loss is equal to the amount paid to the Respondent and less than $30,000.00. Therefore, the Claimant is entitled to recover his actual loss of $10,000.00.

I would be remiss if I did not acknowledge the additional loss that the Claimant has suffered, that of a friend. It was clearly difficult for the Claimant to pursue this Claim, as he and

[4] H.D. 917, 2022 Leg., 444th Sess. (Md. 2022) (to be codified in section 8-405(e)(1) of the Business Regulation Article). *See also* Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4), D(2)(a). The increased cap is applicable to any claim on or after July 1, 2022, 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").

the Respondent were friends. He was noticeably conflicted about taking this action at the suggestion of the Respondent's Personal Representative, but in truth, this is why the Fund exists. It is to assist homeowners when things do not go as planned related to a home improvement contract. The Claimant deserves to be made whole.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $10,000.00 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)(1). I further conclude that the Claimant is entitled to recover that amount from the Fund. COMAR 09.08.03.03B, D.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $10,000.00 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;[5] and

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

Willis Gunther Baker

September 15, 2022
Date Decision Issued

Willis Gunther Baker
Administrative Law Judge

WGB/emh
#200244

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

PROPOSED ORDER

WHEREFORE, this 21st day of October, 2022, 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.

Joseph Tunney

Joseph Tunney
Chairman
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION