

<p>IN THE MATTER OF THE CLAIM</p> <p>OF BRADLEY MEADOR,</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 DYLAN CREW,</p> <p>T/A MARYLAND OUTDOOR LIVING</p> <p>& DESIGN LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE MARY PEZZULLA,</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-02-22-24822</p> <p>* MHIC No.: 22 (75) 921</p> <p>*</p>
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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On July 18, 2022, Bradley Meador (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 \$6,000.00 for actual losses allegedly suffered as a result of a home improvement contract with Dylan Crew, trading as Maryland Outdoor Living & Design LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to 411 (2015

PROPOSED DECISION

STATEMENT OF THE CASE

ISSUE

SUMMARY OF THE EVIDENCE

RELEVANT FACTS AND DISCUSSION

DISCUSSION

REASONING FOR THE DECISION

CONCLUSION

STATEMENT OF THE CASE

In July 2012, the respondent was appointed as the...
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& Supp. 2022).¹ On September 16, 2022, the MHIC issued a Hearing Order on the Claim. On September 23, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On January 31, 2023, I held a hearing by video. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Nicholas C. Sokolow, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented.

After waiting fifteen minutes for the Respondent or the Respondent's representative 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. COMAR 28.02.01.23A. On October 25, 2022, the OAH provided a Notice of Remote Hearing (Notice) to the Respondent by United States Certified Mail as well as by regular mail delivery to the Respondent's addresses on record with the OAH. COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for January 31, 2023, at 9:30 a.m., to be held remotely via the Webex videoconferencing platform. 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 Notice sent via Certified Mail was returned to the OAH as "unclaimed." The Notice sent via regular mail was not returned to the OAH for any reason. The Respondent did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E. The Respondent made no request for postponement prior to the date of the hearing. COMAR 28.02.01.16. I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter. COMAR 28.02.01.05A, C.

¹ Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

1. The Board of Directors of the Corporation shall have the authority to cause the Corporation to incur indebtedness in the amount of up to ten percent (10%) of the total assets of the Corporation, as determined by the Board of Directors.

2. The Board of Directors is authorized to incur such indebtedness on behalf of the Corporation in the amount of up to ten percent (10%) of the total assets of the Corporation, as determined by the Board of Directors, for the purpose of financing the operations of the Corporation.

3. The Board of Directors is authorized to incur such indebtedness on behalf of the Corporation in the amount of up to ten percent (10%) of the total assets of the Corporation, as determined by the Board of Directors, for the purpose of financing the acquisition of additional shares of the Corporation.

4. The Board of Directors is authorized to incur such indebtedness on behalf of the Corporation in the amount of up to ten percent (10%) of the total assets of the Corporation, as determined by the Board of Directors, for the purpose of financing the purchase of real property.

5. The Board of Directors is authorized to incur such indebtedness on behalf of the Corporation in the amount of up to ten percent (10%) of the total assets of the Corporation, as determined by the Board of Directors, for the purpose of financing the purchase of equipment.

6. The Board of Directors is authorized to incur such indebtedness on behalf of the Corporation in the amount of up to ten percent (10%) of the total assets of the Corporation, as determined by the Board of Directors, for the purpose of financing the purchase of services.

7. The Board of Directors is authorized to incur such indebtedness on behalf of the Corporation in the amount of up to ten percent (10%) of the total assets of the Corporation, as determined by the Board of Directors, for the purpose of financing the purchase of other assets.

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:

Clmt. Ex. 1 - Contract between the Claimant and the Respondent, September 8, 2020

Clmt. Ex. 2 - Letter from the Claimant to the Respondent, April 22, 2021 with the following attachments:

- "Meador Project" breakdown, undated
- Modern Renovations estimate, April 20, 2021
- Modern Renovations invoice, March 25, 2021
- Payment details, transaction dates October 26, 2020, November 16, 2020, and December 4, 2020
- Check no. 1132 from the Claimant to the Respondent
- 14 photographs

The Respondent did not appear and did not offer any exhibits.

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Remote Hearing, October 25, 2022

Fund Ex. 2 - Hearing Order, September 16, 2022

Fund Ex. 3 - Letter from the MHIC to the Respondent, July 22, 2022 with attached Claim Form, July 11, 2022

Fund Ex. 4 - Certification of Custodian of Records for the Respondent's licensing history, December 27, 2022

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Testimony

The Claimant testified and did not present other witnesses. The Respondent did not appear and 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 01-138870 and 05-138281.
2. On September 8, 2020, the Claimant and the Respondent entered into a contract to “construct a 16’ x 20’ pressure treated screened in porch, with a lean-to style roof, bronze aluminum roofing will be installed, pre-finished white on ceiling side. Two skylights will be installed at cost of the contractor and a rough in for a fan installation will be completed” (Contract). (Clmt. Ex. 1).
3. The original agreed-upon Contract price was \$12,250.00.
4. The Contract stated that work would begin on the week of September 7, 2020, and would be completed by September 27, 2020.
5. On September 8, 2020, the Claimant paid the Respondent an initial payment of \$7,000.00. The Claimant then paid the Respondent \$1,500.00 on October 26, 2020, \$1,500.00 on November 16, 2020, and \$4,000.00 on December 4, 2020.
6. Although the agreed upon Contract price was \$12,250.00, the Claimant paid the Respondent a total of \$14,000.00.
7. The Respondent performed some work on the project, including framing the porch and installing the roof and skylights. Work proceeded slowly as the Respondent did not always appear at the site and workers would stand around and wait for him.

The Commission has received information from the Government of the United Kingdom that the Government is considering the possibility of introducing legislation to amend the law relating to the control of the export of goods.

LEGISLATION PROPOSED

1. The proposed legislation will provide for the control of the export of goods which are of a description specified in the Schedule to the Bill.
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8. At some point in February 2021, it snowed. When the snow began to melt, water began leaking into the porch from the roof and around the skylights.
9. The project was still not complete by March 2021 and the roof still leaked.
10. On March 7, 2021, the Claimant texted the Respondent to find out when he would be back to work on the project.
11. On March 8, 2021, the Respondent responded to the Claimant, telling the Claimant not to contact him and to only contact his attorney.
12. The Respondent never returned to the property to complete the work.
13. On March 25, 2021, the Claimant contracted with Modern Renovations to replace the leaking roof and reinstall the skylights for \$6,000.00. After the work was performed by Modern Renovations, the roof and skylights no longer leaked.
14. The Claimant performed additional work on the porch himself to complete the work.

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; 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

EXHIBIT

The following is a list of the names of the persons who have been named in the affidavits filed in this case, together with their addresses as given in the affidavits.

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 and 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).

There is no evidence before me that the Claimant unreasonably rejected any good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2022). The Claimant testified credibly that he paid the Respondent more than the contracted amount in order for the Respondent to continue working on the project. The Claimant attempted to contact the Respondent about resuming work on the porch, but the Respondent told the Claimant to only speak to his attorney.

The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. The Claimant presented uncontroverted testimony and evidence showing that the Respondent performed an incomplete and unworkmanlike home improvement on his home located in New Market, Maryland. The Claimant testified that the project initially started well, but then the Respondent stopped showing, and sometimes the workers who came to perform work would stand around, waiting on the Respondent. The porch project was supposed to be completed within twenty days, but due to the Respondent not always coming, dragged on

The Commission has received information regarding the activities of the Communist Party, U.S.A., and its branches in the State of New York. The Commission has conducted a thorough investigation of the matter and has concluded that the Communist Party is engaged in a systematic and organized effort to subvert the Government of the United States and to overthrow the Constitution of the United States by force and violence.

The Commission has also received information regarding the activities of the Communist Party in the State of New York. The Commission has conducted a thorough investigation of the matter and has concluded that the Communist Party is engaged in a systematic and organized effort to subvert the Government of the United States and to overthrow the Constitution of the United States by force and violence.

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for months. The Claimant testified that he paid the Respondent a total of \$14,000.00, even though the Contract price was \$12,250.00. The Claimant made an initial payment of \$7,000.00 on September 8, 2020, and then paid \$1,500.00 on October 26, 2020, \$1,500.00 on November 16, 2020, and \$4,000.00 on December 4, 2020. The Claimant explained that he did this because the Respondent told him that material prices were increasing and if the Claimant did not pay the additional money, the project would not be completed:

The Claimant testified that in February 2021, it snowed and when the snow began to melt, water leaked in from the roof and the skylights. He further explained that any time it rained, water leaked in. The Claimant provided photographs (Clmt. Ex. 2) of water dripping in through the roof of the porch. As addressed above, in March 2021, the Claimant attempted to discuss when the Respondent would be returning to the property to complete the work on the project, but the Respondent was not willing to return to complete the work and directed the Claimant to only speak with his attorney.

The Claimant testified that on March 25, 2021, he contracted with Modern Renovations to have a new roof installed on the porch and to reinstall the skylights in order to prevent leaks. The Respondent paid Modern Renovations \$6,000.00 to remove the existing roof and skylights and reinstall them, as according to Modern Renovations, “the work completed on the back porch [addition] was not done in accordance with the manufacturers['] instructions, “not completed well enough to prevent constant leakage” and “the condition of the roof left the homeowner with no choice but to replace it.” (Clmt. Ex. 2). Although the Claimant did not call anyone from Modern Renovations to testify, the invoice, coupled with the Claimant’s testimony and photographs of the leaking roof, establish by a preponderance of the evidence that the Respondent performed unworkmanlike, inadequate, or incomplete home improvements. The

The Commission has received a number of complaints from the public regarding the proposed development. The Commission is currently reviewing these complaints and will issue a decision in due course. The proposed development is located in the area of [redacted] and is expected to be completed by [redacted]. The Commission is aware of the concerns raised by the public and is taking steps to address them. The Commission is also aware of the benefits of the proposed development and is working to ensure that these benefits are realized. The Commission is currently reviewing the proposed development and will issue a decision in due course. The Commission is aware of the concerns raised by the public and is taking steps to address them. The Commission is also aware of the benefits of the proposed development and is working to ensure that these benefits are realized.

Claimant's testimony was clear and uncontroverted that the Respondent installed a roof that leaked and that he never returned to the property to remedy or finish the porch installation.

Based on the evidence and testimony presented, I find that the Respondent performed unworkmanlike and incomplete home improvements and the Claimant has proven eligibility for compensation. 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. 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.

The Fund argued that I should use a unique formula to calculate the Claimant's actual loss as none of the three formulas listed in COMAR 09.08.03.03B(3)(a)-(c) accurately captures the Claimant's circumstances and loss. The Fund argued that by utilizing a unique formula, I should award the Claimant \$6,000.00, which is the amount he paid to Modern Renovation. On the record, the Fund calculated the award as \$4,250.00, should I utilize the calculation of COMAR 09.08.03.03B(3)(c). While I agree with the Fund that the Claimant's actual loss should be an award of \$6,000.00, I disagree both that a unique formula is required and with its calculation if I use the formula in COMAR 09.08.03.03B(3)(c).

In this matter, the Respondent performed some work under the Contract, and the Claimant retained Modern Renovations to complete and remedy that work. Accordingly, I would use the following formula to measure 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

1. The Commission is of the opinion that the information received from the various sources is not sufficient to enable it to make a final decision on the matter. It is therefore necessary to conduct further investigations. The Commission has accordingly directed the relevant authorities to carry out such investigations as may be required. It is also requested that the authorities concerned should keep the Commission informed of any developments in the matter.

2. The Commission is further of the opinion that the information received from the various sources is not sufficient to enable it to make a final decision on the matter. It is therefore necessary to conduct further investigations. The Commission has accordingly directed the relevant authorities to carry out such investigations as may be required. It is also requested that the authorities concerned should keep the Commission informed of any developments in the matter.

3. The Commission is further of the opinion that the information received from the various sources is not sufficient to enable it to make a final decision on the matter. It is therefore necessary to conduct further investigations. The Commission has accordingly directed the relevant authorities to carry out such investigations as may be required. It is also requested that the authorities concerned should keep the Commission informed of any developments in the matter.

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). Using this formula, the Claimant's loss would be calculated as follows:

Amount the Claimant paid to the Respondent	\$ 14,000.00
Amount the Claimant paid to repair/complete the work	<u>+ \$ 6,000.00</u>
	\$ 20,000.00
Minus contract price	<u>-\$ 12,250.00</u>
Actual loss	\$ 7,750.00

On his Claim Form (Fund Ex. 3), the Claimant listed his claim amount as \$6,000.00. At the hearing, the Claimant also argued that he was seeking and should be awarded \$6,000.00 as his actual loss due to the Respondent's unworkmanlike installation of his porch roof and skylights. I find that the Claimant's reimbursement is limited to \$6,000.00, the amount he requested in the Claim, because it is the only amount of which the Respondent was notified, and the Claimant never amended the Claim.² The APA provides that "[a]n agency shall give reasonable notice of the agency's action." Md. Code Ann., State Gov't § 10-207 (2021). The Supreme Court of Maryland has often reiterated that "[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."

² See COMAR 09.08.03.02C noting that once a claim has been filed with the MHIC, the claimant may not amend the claim unless the claimant can show that he did not know or reasonably could not have known the facts on which the amendment is based on at the time the claim was filed, or that the amendment of the claim would not prejudice the respondent.

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Barrie-Peter Pan Sch., Inc. v. Cudmore, 261 Md. 408, 420-21 (1971) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950)). Accordingly, pursuant to principles of due process and basic fairness to the Respondent, the Claimant should not be awarded more than he requested in the original Claim.

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.³ 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 his actual loss of \$ 6,000.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$6,000.00 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 \$6,000.00 from the Fund.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$6,000.00; 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

³ 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").

under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;⁴ and

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

March 27, 2023
Date Decision Issued



Mary Pezulla
Administrative Law Judge

MP/dlm
#203249

⁴ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

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PROPOSED ORDER

WHEREFORE, this 24th day of May, 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.

Joseph Tunney

Joseph Tunney

Chairman

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***

PROPOSED ORDER

IN RE: [Case Name]

[Text]

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[Signature]

[Name]

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