

IN THE MATTER OF THE CLAIM  
OF MARTIN GLASER,  
CLAIMANT  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ALLEGED ACTS OR  
OMISSIONS OF JEREMY CHARLES  
BARTH,  
T/A MARYLAND FENCE DECK &  
PATIO,  
RESPONDENT

\* BEFORE LEIGH WALDER,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
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\* OAH No.: LABOR-HIC-02-23-32593  
\* MHIC No.: 22 (75) 988

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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 April 7, 2023, Martin Glaser (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>1</sup> Guaranty Fund (Fund) for reimbursement of \$2,999.00 for actual losses allegedly suffered as a result of a home improvement contract with Jeremy Charles Barth, trading as Maryland Fence Deck & Patio (Respondent). Md. Code Ann.,

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<sup>1</sup> The MHIC is under the jurisdiction of the Department of Labor (Department).

Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2024).<sup>2</sup> On December 15, 2024, the MHIC issued a Hearing Order on the Claim. On December 15, 2024, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On July 29, 2024, I held a hearing at the OAH in Hunt Valley, Maryland.<sup>3</sup> Bus. Reg. §§ 8-407(a), 8-312. Jonathan Phillips, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself. As set out below, the Respondent failed to appear to the hearing.

On May 9, 2024, the OAH mailed a Notice of Hearing (Notice) to the Respondent by certified mail and first-class mail. *Id.* §§ 8-312(d), 8-407(a); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for July 29, 2024, at 9:30 a.m., at the OAH, and advised the Respondent that failure to attend the hearing might result in “a decision against you.” The Notice sent to the Respondent via certified mail was returned to the OAH as unclaimed.<sup>4</sup> I waited until 9:45 a.m. to see if either the Respondent or anyone representing the Respondent would appear. Neither did. 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. I determined that the Respondent received proper notice and proceeded in the Respondent’s absence. *See* COMAR 28.02.01.05A, C; *see also* Md. Code Ann., Bus. Reg. § 8-309 (“Within 10 days, a licensee shall notify the [MHIC] of a change of control in ownership, management, address, or trade name.”).

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

<sup>3</sup> The hearing was initially scheduled for April 1, 2024; however, the hearing was postponed at the Appellant’s request for medical reasons. *See* Code of Maryland Regulations (COMAR) 28.02.01.16.

<sup>4</sup> The Notice sent to the Respondent via first-class mail was not returned to the OAH.

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 exhibit offered by the Claimant:

Clmt. Ex. 1 – Packet of documents, consisting of:

- Index, undated
- Two photographs, undated
- Email from the Respondent to the Claimant, dated November 18, 2021
- DocuSign printout, signed November 17, 2021
- Contract, dated November 17, 2021
- Check, dated November 18, 2021
- Shipping History, dated November 24, 2021
- Banking information, dated March 7, 2022
- Email from the Respondent to the Claimant, dated February 18, 2022
- Emails from the Claimant to the Respondent, last dated March 2, 2022
- Check, dated November 18, 2021
- Department of Housing and Community Development printout, undated
- Letter from the Claimant to the Respondent, dated October 5, 2022
- United States Postal Service Tracking, dated October 14, 2022
- Letter from the MHIC to the Respondent, dated November 10, 2022
- Estimate, dated January 26, 2023
- Letter from the Claimant's sister to the MHIC, dated July 20, 2024
- Check, dated November 18, 2021
- Shipping History, dated November 26, 2021
- Banking information, dated March 7, 2022
- Contract, dated November 17, 2021

No exhibits were submitted on behalf of the Respondent.

I admitted the following exhibits offered by the Fund:

GF Ex. 1 – Notice, dated May 9, 2024

GF Ex. 2 – Notice, dated January 25, 2024

GF Ex. 3 – Transmittal, dated December 15, 2024; Hearing Order, dated December 15, 2024

GF Ex. 4 – Home Improvement Claim Form, dated March 17, 2023

GF Ex. 5 – Licensing information, printed March 18, 2024

Testimony

The Claimant testified on his own behalf.

The Respondent was not present to testify or offer any witnesses.

The Fund did not offer any 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 MHIC license number 01-100997.

2. On or about November 12, 2021, the Claimant and the Respondent entered into a contract where the Claimant agreed to pay the Respondent \$8,998.00 so that the Respondent would construct a deck onto the Claimant's property. The contract required the Respondent to perform the following work:

Install approx. 86 total sqft (sic) of Pressure Treated 5/4" x 6" Wood Decking  
Plus approx. 36 sqft (sic) of stairs. (9 steps approx. 4 ft wide to ground).  
Stairs include closed riser and sides.  
2x8 joists spaced 16" on center  
6x6 support posts  
Platform from main deck to door to Ledgered (sic) to home for rear support. Larger deck areas to be free standing.  
Deck will have doubled outside box frame

Includes 36" high All black aluminum Trex signature railing  
All footers to be 30" deep and 24" square with 240lbs of wet poured concrete set on virgin soil.  
Includes Baltimore City Building permit and CAD drawings

(Clmt. Ex. 1).

3. The contract provided that the Claimant was to pay the Respondent \$2,999.00 at signing.

4. On November 18, 2021, the Claimant paid the Respondent \$2,999.00 by check.

5. The Respondent cashed the Claimant's check.

6. The Respondent did not return to the Claimant's property to perform any work under the contract.

7. On February 18, 2022, the Claimant received an email from the Respondent which stated that the Respondent closed his company and told the Claimant to dispute whatever payment the Claimant made to the Respondent with his credit card company.<sup>5</sup>

8. The contract with the Respondent contained an arbitration clause that stated:

Buyer and Seller waive claims against each other for consequential or punitive damages arising out of or [in] relation to this agreement. At the Seller's sole option, any controversy or claim arising out of this agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association.

(Clmt. Ex. 1).

9. On or about October 10, 2022, the Claimant wrote a letter to the Respondent inquiring if the Respondent intended to pursue arbitration.

10. The Respondent never responded to the Claimant's inquiry.

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<sup>5</sup> As previously set out, the Claimant paid by check, not by credit card.

## 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 (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.

### Eligibility for Compensation

The evidence in this case establishes there are no legal impediments barring the Claimant from filing a claim under section 8-405 of the Business Occupations Article.

The Respondent was a licensed home improvement contractor at the time of the contract. 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 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 contract between the Claimant and the Respondent included an agreement which provided only the Respondent – as the seller of services – the option to submit a dispute with the Claimant – as the buyer of services – to arbitration. The Respondent never invoked this option. Therefore, the arbitration clause in the contract does not bar the claim. *See id.* §§ 8-405(c) (2015 & Supp. 2023); *see also* COMAR 09.08.03.02E.

The Claimant argued, and the Fund agreed, that he suffered an actual loss incurred as a result of the Respondent's acts or omissions, entitling him to compensation from the Fund. Specifically, the Claimant argued that, despite being paid \$2,999.00, the Respondent failed to perform any work to construct a deck, as contracted. The Claimant produced the contract that required the Respondent to construct a deck after receiving \$2,999.00. (Clmt. Ex. 1). Despite being paid \$2,999.00, the Respondent performed no work under the contract. The Claimant also supplied a photograph of where the work was to be performed, showing no deck. (*Id.*).

Based on his testimony and photograph, the Claimant's assertion that the Respondent performed no work is credible. Therefore, the Claimant established that he suffered an actual loss due to an incomplete home improvement. 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.

Award

The Claimant seeks the return of the \$2,999.00 that he paid the Respondent. The Fund agreed the Claimant is entitled to this amount. 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). The MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

Here, the Respondent abandoned the contract without doing any work. Accordingly, the following formula appropriately measures the Claimants' 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 submitted proof that he paid the Respondent \$2,999.00 under the contract. (Clmt. Ex. 1). Therefore, the Claimant's actual loss is \$2,999.00.

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.<sup>6</sup> Bus. Reg. § 8-405(e)(1), (5) (Supp. 2024); COMAR 09.08.03.03B(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 \$2,999.00.

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<sup>6</sup> 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 \$2,999.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2024); COMAR 09.08.03.03B(3)(a). I further conclude that the Claimant is entitled to recover \$2,999.00 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(a) (Supp. 2024); COMAR 09.08.03.03B(3)(a).

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$2,999.00; 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;<sup>7</sup> and

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

October 28, 2024  
Date Decision Issued

*Leigh Walder*  

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Leigh Walder  
Administrative Law Judge

LW/sh  
#214742

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<sup>7</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

**PROPOSED ORDER**

***WHEREFORE, this 31<sup>st</sup> day of March, 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.***

***Michael Shilling***

***Michael Shilling***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***