

IN THE MATTER OF THE CLAIM	* BEFORE KRISTIN E. BLUMER,
OF JASON HARTER,	* 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	*
TIMOTHY FARO, JR.,	*
T/A BIRDLAND BUILDERS, LLC,	* OAH No.: LABOR-HIC-02-23-28189
RESPONDENT	* MHIC No.: 23 (75) 1574

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On August 24, 2023, Jason Harter (Claimant) filed a claim (Claim)¹ with the Maryland Home Improvement Commission (MHIC)² Guaranty Fund (Fund) for reimbursement of \$16,581.04 for actual losses allegedly suffered as a result of a home improvement contract with Timothy Faro, Jr., trading as Birdland Builders, LLC (Respondent).³ On October 30, 2023, the

¹ The Claimant dated the Claim form August 9, 2023. The Maryland Home Improvement Commission received the Claim form on August 24, 2023.

² The MHIC is under the jurisdiction of the Department of Labor.

³ Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023). Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

MHIC issued a Hearing Order on the Claim. On October 31, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On February 1, 2024, I held a hearing at the OAH in Hunt Valley, Maryland.⁴ Jessica Kaufman, Assistant Attorney General, represented the Fund. The Claimant represented himself. The Respondent did not appear. 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.⁵ On November 28, 2023, the OAH provided a Notice of Hearing (Notice) to the Respondent by certified mail and first-class mail.⁶ The Notice stated that a hearing was scheduled for February 1, 2024, at 9:30 a.m., at the OAH located at 11101 Gilroy Road, Hunt Valley, Maryland.⁷ 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) did not return the Notice sent to the Respondent by first-class mail to the OAH. The USPS returned the Notice sent to the Respondent by certified mail to the OAH marked as "unclaimed – unable to forward" as of January 14, 2024. The Respondent did not notify the OAH of any change of mailing address, email address, and/or telephone number.⁸ The Respondent made no request for postponement prior to the date of the hearing.⁹ I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter.¹⁰

⁴ Bus. Reg. §§ 8-407(a), 8-312.

⁵ Code of Maryland Regulations (COMAR) 28.02.01.23A.

⁶ Bus. Reg §§ 8-312(d), 8-407(a); COMAR 28.02.01.05C(1).

⁷ COMAR 09.08.03.03A(2).

⁸ COMAR 28.02.01.03E.

⁹ COMAR 28.02.01.16.

¹⁰ COMAR 28.02.01.05.

The contested case provisions of the Administrative Procedure Act, the Department of Labor's (Department) hearing regulations, and the Rules of Procedure of the OAH govern procedure.¹¹

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 Letter and Checklist re: Claim, undated; MHIC Mediation Form, undated; MHIC Complaint Form, June 16, 2023
- Clmt. Ex. 2: Letter from the Claimant to the Department, June 16, 2023
- Clmt. Ex. 3: Contract, May 21, 2021
- Clmt. Ex. 4: Emails between the Respondent and counsel for the Claimant, various dates
- Clmt. Ex. 5a-j: Various color photographs, undated
- Clmt. Ex. 6: Contract between the Claimant and Robert J. Feldman, III, April 25, 2023
- Clmt. Ex. 7: Proposal, J.J. Headley Construction, March 4, 2023
- Clmt. Ex. 8: Job Price Summary, Birdland Builders, printed January 25, 2023
- Clmt. Ex. 9: Payment records, various dates

The Respondent did not offer any exhibits for admission into evidence.

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1: Notice of Hearing, November 28, 2023

¹¹ Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021 & Supp. 2023); COMAR 09.01.03; COMAR 28.02.01.

Fund Ex. 2: Transmittal Form, October 31, 2023; MHIC Hearing Order, October 30, 2023; Claimant's Home Improvement Claim Form, received August 24, 2023

Fund Ex. 3: MHIC Licensing Information for the Respondent, printed January 23, 2024

Fund Ex. 4: Letter to the Respondent from the MHIC, August 24, 2023; Claimant's Home Improvement Claim Form, received August 24, 2023

Testimony

The Claimant testified and did not present other witnesses.

The Respondent did not appear and therefore, did not present any witnesses.

The Fund did not present any witnesses.

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 01-109840.
2. At all relevant times, the Respondent's corporate entity was a licensed home improvement contractor under MHIC license number 05-132509.
3. At all relevant times, the Claimant owned and resided in a home located in Hampstead, Maryland (the Residence). The Claimant does not own any other residential properties in Maryland.
4. On May 21, 2021, the Claimant entered into a contract with the Respondent for the Respondent to remodel the basement of the Residence (Contract).
5. The scope of the work set forth in the Contract list of work included, but was not limited to: (1) installation of cabinets, countertop, and bar sink; (2) installation of new flooring and shoe molding; (3) running water lines and hooking up toilet, shower, and sink in bathroom, including installation of shower pan, shower door, and faucet; (4) installation of tile in the bathroom and in the inside area near the door to the outside; (5) framing, hanging of drywall, and

installation of doors and trim; (6) priming all new drywall and painting all walls, ceilings, doors, and trim; (7) creating a half-wall and installing a railing at the staircase; (8) installing custom built-in cabinets and shelving; and (9) providing a dumpster and removing trash.

6. The agreed-upon Contract price was \$81,918.00.
7. The Contract required an initial payment of \$20,000.00 upon the execution of the Contract.
8. The Contract required a second payment of \$18,000.00 due after the electrical and plumbing rough-in work was completed.
9. The Contract required a third payment in the amount of \$18,000.00 due upon completion of the drywall installation.
10. The Contract required a fourth payment in the amount of \$18,000.00 due upon completion of the flooring installation.
11. The Contract required a final payment of the balance due "once client walkthrough is complete."¹²
12. On a date not specified in the record, the Claimant and the Respondent agreed to change orders to upgrade the bathroom tile and upgrade the paint. The change orders amounted to an additional \$5,553.96 in costs for the work.
13. The original Contract price of \$81,918.00, plus the change orders of \$5,553.96 totals \$87,471.96. The Claimant deducted a selection credit of \$43.00 from the new Contract price, resulting in a final revised Contract price of \$87,428.96.
14. Although the Contract did not identify a start date, a completion date, or set any schedule for the completion of the work, the parties discussed completion of the work by the end of the summer of 2021.

¹² Clmt. Ex. 3, p. 4.

15. The Respondent began work pursuant to the Contract in May 2021.
16. Due to a delay in the delivery of tile, the Claimant adjusted his expectation as to when the work would be completed to include an extra thirty days.
17. The Claimant paid the Respondent in the following installments:

Date	Payment	Notes
5/23/2021	\$20,000.00	Deposit
6/11/2021	\$18,000.00	Second draw
7/14/2021	\$18,000.00	Third draw
9/27/2021	\$3,000.00	
9/29/2021	\$683.00	
11/10/2021	\$5,300.00	Fourth draw
11/10/2021	\$920.00	Paint overage and drywall patch
12/16/2021	\$12,700.00	Fourth draw-flooring
TOTAL:	\$78,603.00	

18. At the end of the summer of 2021, the Respondent stopped coming to the Residence to work for weeks at a time.
19. After the Respondent stopped coming to the Residence on a regular basis at the end of the summer of 2021, the Claimant contacted the Respondent by telephone, text message, and email to inquire about the Respondent's status and availability to return to complete the work. The Respondent did not respond or return to the Residence to complete the work.
20. In the summer of 2022, the Respondent sent a representative to the Residence about the granite countertops.
21. In November 2022, the Respondent sent one of his employees to the Residence to perform unspecified work.
22. After November 2022, the Respondent failed to complete the work specified in the Contract, including completion of the painting, installation of cabinets/shelving, and completion of the bathroom.

23. As of November 2022, some of the work completed by the Respondent was inadequate: trim work was installed incorrectly, the granite bar top was not properly secured, the bathroom pocket doors were sized incorrectly, and the railing was unfinished.

24. Beginning in March 2023, counsel for the Claimant contacted the Respondent by email several times to inquire about when the Respondent could finish the work under the Contract.

25. On March 21, 2023, the Respondent advised counsel for the Claimant that he intended to finish the work but would not be able to do so for at least two weeks.

26. On April 17, 2023, counsel for the Claimant emailed the Respondent noting that he had not heard back from the Respondent and that the Respondent had not completed the work under the Contract; therefore, the Claimant was prepared to file a claim with the HIC. The Respondent replied to the email and advised counsel for the Claimant:

Not sure your [sic] aware of the process and how things work. But if you file, it won't be until October until you get a hearing, and then you'll receive any money they award you over the balance that is already due to us. So if we're due \$10k, and it cost \$12k, you'll get the difference, but it won't be for a few months until after the hearing. I'll get someone scheduled out there, but it won't be this week.^[13]

27. The Respondent failed to return to the Residence, contact the Claimant, or complete the project after April 17, 2023.

28. On or about April 25, 2023, the Claimant contracted with Robert J. Feldman, III (Feldman), an MHIC-licensed contractor, to remediate some of the work done by the Respondent and to finish the work specified in the Contract (Feldman contract).

29. The total cost of the Feldman contract to complete and remediate the work was \$25,450.00.

¹³ Cl. Ex. 4.

DISCUSSION

LEGAL FRAMEWORK

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence.¹⁴ 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.¹⁵ An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor.”¹⁶ “[A]ctual loss’ means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.”¹⁷

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.¹⁸ The Claimant resides in the home that is the subject of the claim.¹⁹ The parties did not enter into a valid agreement to submit their disputes to arbitration.²⁰ 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.²¹

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

POSITIONS OF THE PARTIES

The Claimant asserted that the Respondent failed to complete the work as agreed to in the Contract and that some of the work that was completed was inadequate. The Claimant argued

¹⁴ Bus. Reg. § 8-407(e)(1); State Gov’t § 10-217; COMAR 09.08.03.03A(3).

¹⁵ *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002).

¹⁶ Bus. Reg. § 8-405(a) (Supp. 2023); *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.”).

¹⁷ *Id.* § 8-401.

¹⁸ *Id.* §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2023).

¹⁹ *Id.* § 8-405(f)(2) (Supp. 2023).

²⁰ *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2023).

²¹ *Id.* § 8-405(f)(1) (Supp. 2023).

that the Respondent abandoned the job, which caused him to seek other contractors to complete the basement renovation as set forth in the Contract.

The Fund argued that the Claimant established that he paid the Respondent pursuant to the Contract, that the Respondent did not complete the work contracted for, and that he abandoned the job without justification.

The Fund further asserted that the Claimant established that he paid another contractor to complete the work required under the Contract, and that the appropriate calculations result in an actual loss amount of \$16,624.04. Therefore, the Fund recommended an award to the Claimant of \$16,624.04.

ANALYSIS

The Claimant credibly testified that the Respondent failed to complete the work specified in the Contract and performed some of the work inadequately. The Claimant explained that he tried to be patient and gave the Respondent ample time to return to complete the work, understanding that those working in the home improvement industry faced some challenges during the “crazy times” of 2021 and 2022. The Claimant produced photographs that clearly depict unfinished painting, the improperly secured granite bar top, the unfinished work in the bathroom, improperly installed trim work, the lack of built-in cabinets and shelving, and the unfinished railing.²² Given such clear evidence, no expert testimony is required to establish the unworkmanlike and inadequate nature of the work performed by the Respondent. Moreover, the Respondent admitted in his communications with Claimant’s counsel that the work was incomplete.²³ Therefore, I find that the Respondent failed to complete the basement renovation as specified in the Contract, and that some of the work that the Respondent performed was

²² Cl. Ex. 5a-j.

²³ Cl. Ex. 4.

inadequate. I further find that the Claimant contracted with Feldman to finish the basement renovation and paid them \$24,250.00 for the work. The Claimant has met his burden to demonstrate that he sustained an actual loss as a result of the Respondent's acts or omissions, and is, therefore, eligible for compensation from the Fund.

Compensation

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.²⁴ The MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.²⁵

The first formula is applicable when a contractor abandons the contract without performing any work.²⁶ In this case the Respondent performed some work, and thus, the first formula is clearly not applicable here.

The second formula applies when "the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract"²⁷ Under this circumstance, "the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor."²⁸ The second formula does not apply in this case because the Claimant hired a subsequent contractor to complete the work abandoned under the Contract.

²⁴ Bus. Reg. § 8-405(e)(3) (Supp. 2023); COMAR 09.08.03.03B(1).

²⁵ COMAR 09.08.03.03.B(3).

²⁶ COMAR 09.08.03.03B(3)(a).

²⁷ COMAR 09.08.03.03B(3)(b).

²⁸ *Id.*

The third formula is applicable when the Respondent performed some work under the Contract, and the Claimant retained another licensed contractor to complete 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.^[29]

Applying the third formula to this case, the Claimants' actual loss is as follows:

Amount paid to the Respondent:	\$78,603.00
Plus amount paid to complete work:	+\$25,450.00
<u>Less the revised Contract price:</u>	<u>- \$87,428.96</u>
Actual Loss Total:	\$16,624.04

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.³⁰ In this case, the Claimant's actual loss of \$16,624.04 does not exceed \$30,000.00. Therefore, the Claimant's recovery is limited to \$16,624.04.

²⁹ COMAR 09.08.03.03B(3)(c).

³⁰ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4). 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 \$16,624.04 as a result of the Respondent's acts or omissions.³¹ I further conclude that the Claimant is entitled to recover \$16,624.04 from the Fund.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$16,624.04; 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;³² and

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

April 18, 2024
Date Decision Issued

Kristin E. Blumer

Kristin E. Blumer
Administrative Law Judge

KEB/dlm
#210920

³¹ Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2023); COMAR 09.08.03.03B(3)(c).

³² See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 15nd day of July, 2024, 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***