

IN THE MATTER OF THE CLAIM	BEFORE MICHAEL J. JACKO,
OF KENDAL JOYCE	* 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 BRYON JONES, T/A	*
BOJ & SON'S CONSTRUCTION, LLC,	* OAH No.: LABOR-HIC-02-24-01742
RESPONDENT	* MHIC No.: 23 (75) 246
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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 October 10, 2023, Kendal Joyce (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>1</sup> Guaranty Fund (Fund) for reimbursement of \$45,000.00 for actual losses allegedly suffered as a result of a home improvement contract with Bryon Jones (Respondent), trading as BOJ & Son's Construction, LLC.<sup>2</sup> On January 16, 2024,

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

<sup>2</sup> 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 Volume of the Maryland Annotated Code.

the MHIC issued a Hearing Order on the Claim, and the next day, it forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On May 7, 2024, I held a hearing at the OAH in Hunt Valley, Maryland.<sup>3</sup> Kris M. King, Assistant Attorney General, Department of Labor (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.<sup>4</sup> On February 14, 2024, the OAH provided, by certified mail and first-class mail, a Notice of Hearing (Notice) to the Respondent's address on record with the MHIC.<sup>5</sup> On March 4, 2024, the OAH sent, also by certified mail and first-class mail, additional copies of the Notice to the Respondent's alternate address. All copies of the Notice stated that a hearing was scheduled for May 7, 2024, at 9:30 a.m., at the OAH in Hunt Valley, Maryland.<sup>6</sup> The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."<sup>7</sup>

The United States Postal Service returned to the OAH the Notices sent to the Respondent's alternate address with the notation "attempted—not known; unable to forward." However, the Notices sent to the Respondent's primary address, which is on file with both the MHIC and the Maryland Motor Vehicle Administration, were not returned. The Respondent did not notify the OAH of any change of mailing address.<sup>8</sup> I determined that the Respondent received proper notice, and I proceeded to hear the above-captioned matter.<sup>9</sup>

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<sup>3</sup> Bus. Reg. §§ 8-407(a), 8-312.

<sup>4</sup> Code of Maryland Regulations (COMAR) 28.02.01.23A.

<sup>5</sup> Bus. Reg §§ 8-312(d), 8-407(a); COMAR 28.02.01.05C(1).

<sup>6</sup> COMAR 09.08.03.03A(2).

<sup>7</sup> Bus. Reg §§ 8-312(d), 8-407(a); COMAR 28.02.01.05C(1).

<sup>8</sup> COMAR 28.02.01.03E.

<sup>9</sup> COMAR 28.02.01.23A; *and see* 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.<sup>10</sup>

### 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, May 17, 2021
- Clmt. Ex. 2 - Complaint letter from the Claimant to the Respondent, August 19, 2021
- Clmt. Ex. 3 - Complaint letter from the Claimant to the Respondent, November 11, 2021
- Clmt. Ex. 4 - Refund letter from the Respondent to the Claimant, February 13, 2022
- Clmt. Ex. 5 - Cashier's checks from the Claimant to the Respondent for \$30,000.00 (May 17, 2021) and \$15,000.00 (June 10, 2021)

The Respondent did not offer any exhibits.

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Notice of Hearing to the Respondent with certified mail receipt, February 14, 2024
- Fund Ex. 2 - Hearing Order, January 16, 2024
- Fund Ex. 3 - Affidavit of MHIC Executive Director David Finneran with MVA records, May 6, 2024; and certified MHIC records, May 3, 2024
- Fund Ex. 4 - Home improvement claim form, October 10, 2023
- Fund Ex. 5 - MHIC claim notice to the Respondent, October 12, 2023

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

Fund Ex. 6 - Photograph of rear exterior of the Claimant's property, mid-to-late June, 2021

Fund Ex. 7 - Photograph of second floor bedroom of the Claimant's property, date uncertain

Testimony

The Claimant testified and did not present other witnesses.

The Respondent 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 01-118128, with his trade name licensed under number 05-137602.
2. The Claimant owns a rowhome located on 8th Street in Baltimore, Maryland (the Property).<sup>11</sup> She owns no other homes in Maryland.
3. On May 17, 2021, the Claimant and the Respondent entered into a contract to gut and renovate the Property (Contract).
4. The original agreed-upon Contract price was \$60,000.00.
5. The Contract stated that work would begin on June 1, 2021, and would be completed within approximately two to three months.
6. On May 17, 2021, the Claimant paid the Respondent \$30,000.00.
7. The Claimant resided at the Property as her principal residence for roughly five years until May of 2021. After entering into the Contract, the Claimant moved in with an aunt in order to make way for the Respondent to complete the agreed upon work.

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<sup>11</sup> The full address is located in the file.

8. Over the course of two weeks in June of 2021, two individuals employed by the Respondent came to work at the Property, but aside from the removal of some wood paneling, they made virtually no progress on the completion of the Contract.
9. To date, the Respondent completed no other work under the terms of the Contract.
10. The Respondent indicated that the lack of progress on the Contract was due in part to the presence of rats.
11. On or about June 10, 2021, the Respondent and the Claimant entered into a verbal supplement (the Supplement) to their original Contract. The Supplement indicated that the Respondent would have the Property's back yard paved in concrete and erect a fence surrounding it, with the hope that doing so might prevent rats from entering the home.
12. On June 10, 2021, the Claimant paid the Respondent an additional \$15,000.00 to cover the entire cost of the Supplement.
13. Later in June of 2021, another individual employed by the Respondent removed an enclosure over the rear patio of the Property. This step was necessary to facilitate the planned paving of the back yard as contemplated in the Supplement.
14. To date, the Respondent completed no other work related to the Supplement.
15. The Claimant communicated with the Respondent several times in the summer and fall of 2021 in attempts to convince him to perform on the Contract and the Supplement. The Respondent did not personally visit the Property again until November 2021.
16. In November 2021, the Respondent completed a walk-through of the Property to assess the work that had and had not been done under the Contract or the Supplement.
17. On February 13, 2022, the Respondent wrote a letter to the Claimant, acknowledging that he had failed to complete the Contract or the Supplement and would be

refunding her, within ninety days, the full sum of \$45,000.00 that she had paid toward the Contract and the Supplement.

18. Since February 13, 2022, the Claimant has made approximately fifteen unanswered attempts to contact the Respondent.

### DISCUSSION

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence.<sup>12</sup> 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.<sup>13</sup>

An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor.”<sup>14</sup> “[A]ctual loss’ means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.”<sup>15</sup> 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.<sup>16</sup> The Claimant resided in the home that is the subject of the claim up until the time that she entered into the Contract with the Respondent, and expects to move back into that residence if and when the necessary renovations are complete.<sup>17</sup> The

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<sup>12</sup> Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov’t § 10-217 (2021); COMAR 09.08.03.03A(3).

<sup>13</sup> *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002).

<sup>14</sup> 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.”).

<sup>15</sup> Bus. Reg. § 8-401.

<sup>16</sup> Bus. Reg §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2023).

<sup>17</sup> *Id.* § 8-405(f)(2) (Supp. 2023). Even if the Property were not her residence, the Claimant meets the alternative eligibility criteria that she does not own more than three dwellings. *Id.*

parties did not enter into a valid agreement to submit their disputes to arbitration.<sup>18</sup> 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.<sup>19</sup>

The Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim.<sup>20</sup> Rather, the Claimant welcomed the only suggested resolution that the Respondent made, *i.e.*, to grant her a full refund. However, the Respondent did not complete the offered payment, and has now ceased returning the Claimant's calls.<sup>21</sup>

The Respondent performed inadequate and incomplete home improvements. The Contract contemplated a complete demolition and renovation of the Property's interior. The only work performed that was covered by this agreement is the removal of some wood paneling, which is not specifically enumerated in the Contract, but arguably falls under the category of "demo/prep/clean for the entire site."<sup>22</sup> The only work performed that was arguably *related* to the Supplement was the removal of an enclosure over the back patio. However, the Claimant understood the Respondent to have offered that service for free and denies that it was specifically *covered* under the Supplement, the primary purpose of which was to pave the back yard and erect a fence. Because the agreement was not reduced to writing and in the absence of evidence to the contrary, I find the Claimant's interpretation is correct. For these reasons, I 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

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<sup>18</sup> *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2023).

<sup>19</sup> *Id.* § 8-405(f)(1) (Supp. 2023).

<sup>20</sup> *Id.* § 8-405(d) (Supp. 2023).

<sup>21</sup> The Claimant believes the Respondent blocked her number.

<sup>22</sup> Clmt. Ex. 1.

compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest.<sup>23</sup> The MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.<sup>24</sup>

The Respondent performed some work under the Contract, and the Claimant is not seeking 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 is not soliciting another contractor to complete the contract, 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."<sup>25</sup>

The only work that was done under the Contract was the removal of some wood paneling, which was not specifically enumerated except under the general category of "demo/prep/clean the entire site." I find this task to have been of negligible value. The only work I find to have been done bearing any relation to the Supplement was the removal of the enclosure over the rear patio, but the record contains no evidence that the removal of the enclosure was actually covered by the terms of that agreement, and even if it was, there is no evidence that this service was of any value. By offering to refund all the money the Claimant paid for the Contract and the Supplement, the Respondent implicitly endorsed the assessment that he had failed to provide services of any value under either agreement.

For the reasons stated above, I find the Claimant to have suffered a loss equal to \$45,000.00 (the total amount she paid to the Respondent under the Contract and the Supplement)

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<sup>23</sup> Bus. Reg. § 8-405(e)(3) (Supp. 2023); COMAR 09.08.03.03B(1).

<sup>24</sup> COMAR 09.08.03.03B(3).

<sup>25</sup> COMAR 09.08.03.03B(3)(b).



minus \$0.00 (the value of the materials and services provided by the contractor), for a total actual loss of \$45,000.00.

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>26</sup> In this case, the Claimant's actual loss of \$45,000.00 exceeds \$30,000.00. Therefore, the Claimant's recovery is limited to \$30,000.00.<sup>27</sup>

### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual, compensable loss of \$30,000.00 as a result of the Respondent's omissions.<sup>28</sup> I further conclude that the Claimant is entitled to recover that amount from the Fund.

### **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;<sup>29</sup> and

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<sup>26</sup> 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").

<sup>27</sup> *Id.*

<sup>28</sup> Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2023); COMAR 09.08.03.03B(3)

<sup>29</sup> *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.

May 29, 2024  
Date Decision Issued

MJJ/dlm  
#211715

*Michael Jacko*

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Michael J. Jacko,  
Administrative Law Judge

**PROPOSED ORDER**

***WHEREFORE, this 20<sup>th</sup> day of September, 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.***

***Chandler Louden***

***Chandler Louden***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***