

IN THE MATTER OF THE CLAIM	* BEFORE WILLIAM F. BURNHAM,
OF LESLIE OMORUYI,	* 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 OLUMIDE ALLI,	*
T/A ON POINT CONSTRUCTION	* OAH No.: LABOR-HIC-02-23-25547
SERVICES, LLC,	* MHIC No.: 23 (75) 271
RESPONDENT	*

\* \* \* \* \*

**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 January 10, 2023, Leslie Omoruyi (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>1</sup> Guaranty Fund (Fund) for reimbursement of \$23,000.00 for actual losses allegedly suffered as a result of a home improvement contract with Olumide Alli, trading as On Point Construction Services, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).<sup>2</sup>

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

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

On September 28, 2023, the MHIC issued a Hearing Order on the Claim. On September 29, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On January 30, 2024, I held a hearing<sup>3</sup> on the Webex video conferencing platform. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1). Jessica Kaufman, Senior Assistant Attorney General, Department, represented the Fund. Gregory Robinson, Esquire, represented the Claimant.

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 December 4, 2023, the OAH provided a Notice of Hearing (Notice) by United States mail to the parties at their addresses of record. COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for January 30, 2024, at 9:30 a.m. at the OAH. COMAR 09.08.03.03A(2). The Notice further advised the parties that failure to attend the hearing might result in "a decision against you."

The United States Postal Service returned the Respondent's signed certified mail receipt on December 11, 2023 indicating that the Notice was received. The Respondent did not request a 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.

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.,

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<sup>3</sup> The hearing was scheduled for November 28, 2023 but was postponed when it was discovered that notice was mailed to an incorrect address for the Respondent.

State Gov't §§ 10-201 through 10-226 (2021 & Supp. 2023); 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:

- CL. Ex. 1 - Contract between the Claimant and the Respondent, undated (Contract); copies of checks from the Claimant to the Respondent, July 12, 2022, August 3, 2022, August 11, 2022
- CL. Ex. 2A-F - Photographs from the Claimant's basement, undated<sup>4</sup>
- CL. Ex. 3 - Repair Plan from '58 Foundations & Waterproofing ('58), June 1, 2023
- CL. Ex. 4- CD-ROM containing two videos, undated

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Notice of Hearing, October 27, 2023
- Fund Ex. 1A - Notice of Hearing, December 4, 2023
- Fund Ex. 2 - Hearing Order, September 28, 2023; Home Improvement Claim Form, received January 10, 2023
- Fund Ex. 3 - MHIC Licensing History for the Respondent, November 17, 2023
- Fund Ex. 4 - Letter from the MHIC to the Respondent, January 19, 2023; with attached claim form, January 10, 2023

The Respondent did not offer any exhibits.

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<sup>4</sup> I marked the letter designations on the reverse side of each photograph.

Testimony

The Claimant testified and presented the testimony of Nader Elhadj, a Maryland Licensed Engineer, whom I accepted as an expert in structural engineering.

The Respondent and the Fund did not present 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 05-148455 and 5863188.
2. On a date on or before July 10, 2022, the Claimant and the Respondent entered into the Contract for improvements at the Claimant's property located on Old Prospect Hill Road in Glenn Dale, Maryland (Property).<sup>5</sup>
3. The Property is the only real property owned by the Claimant in the State of Maryland.
4. The total Contract price was \$24,000.00.
5. The Scope of the Contract included:
  - Excavate a twenty by ten square foot area
  - Build a retaining concrete wall
  - Install pipes and connect with current sump pump
  - Integrate space with existing basement
  - Re-grout entire basement

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<sup>5</sup> The full address is contained in the exhibits.

6. The Claimant paid the Respondent a total of \$20,000.00 in the following amounts on the following dates:

- \$12,000.00 on July 10, 2022
- \$ 6,000.00 on August 3, 2022
- \$ 2,000.00 on August 11, 2022

7. After the initial payment, the Respondent sent a crew (Crew I) and Crew I began work at the Property pursuant to the Contract.

8. After the Claimant expressed concern about the progress of the excavation, the Respondent sent another crew (Crew II) to the Property.

9. The Respondent requested the additional \$6,000.00, paid on August 3, 2022, for the new crew and materials, and the Claimant paid him.

10. Crew II told the Claimant that they were not being paid by the Respondent.

11. The Respondent requested the additional \$2,000.00, paid on August 11, 2022, in order to pay Crew II, and the Claimant paid him.

12. Crew II left the Property and told the Claimant they were not paid.

13. The Respondent's crews structurally damaged the Property when they excavated under walls and caused the Property to become structurally unstable and subject to possible collapse.

14. The Respondent did not return to the Property.

15. On a date not contained in the record, the Claimant received an estimate from '58 to repair the damage caused by the Respondent.

16. The Claimant paid '58 to repair the structural damage.

## 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 Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

By statute, certain claimants are excluded from recovering from the Fund altogether. An award from the Fund may occur only if: (a) the claimant resides in the home as to which the claim is made, or owns no more than three dwelling places; (b) the claimant is not an employee, officer, or partner of the contractor; or the spouse or other immediate relative of the contractor or the contractor's employees, officers or partners; (c) the work at issue did not involve new home construction; (d) the claimant did not unreasonably reject the contractor's good faith effort to resolve the claim; (e) the claimant complied with any contractual arbitration clause before seeking compensation from the Fund; (f) there is no pending claim for the same loss in any court of competent jurisdiction and the claimant did not recover for the actual loss from any source; and (g) the claimant filed the claim with the MHIC within three years of the date the claimant knew, or with reasonable diligence should have known, of the loss or damage. Bus. Reg. §§ 8-405(c), (d), (f), and (g), 8-408(b)(1) (Supp. 2023); Bus. Reg. § 8-101(g)(3)(i) (Supp. 2023).

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. 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.”). “[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.

The Fund’s counsel did not assert that any statutory exclusions applied to this case, and I find that the Claimant was not subject to any of the statutory exclusions for recovery from the Fund. Additionally, the evidence demonstrates that the Respondent abandoned the project without doing any appreciable work and, in fact, damaged the Property.

There is no dispute that the Respondent performed unworkmanlike, inadequate, or incomplete home improvements. The Claimant provided ample evidence, in the form of expert testimony and exhibits, that the Respondent performed unworkmanlike, inadequate, and incomplete home improvements. The Respondent demanded more money than allowed at the outset of the project and then did not complete the Contract. The Claimant testified to the water damage caused by the excavation performed by the Respondent and testified that he still does not have the scope of the original contract completed because he had to pay to repair the damages caused by the Respondent.

The Respondent structurally damaged the Property and an engineer, Mr. Elhajj, was hired by '58 to draw up plans to remediate the damage. Mr. Elhajj testified credibly that when he arrived, the work performed by the Respondent’s crews jeopardized the Property’s structure such that it could have collapsed. He developed a plan that was approved by the county to repair the damage and provided it to '58. Mr. Elhajj testified that the value of the work completed by the Respondent was zero because it was “useless” and, therefore, the Claimant’s payments to the Respondent were “a wasted \$20,000.00.” As a result, I find the Respondent’s work was unworkmanlike, inadequate, and incomplete, and that the Claimant is eligible for compensation from the Fund because the work that Crews I and II did jeopardized the structural integrity of the Property.

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. 2023); 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 Claimant testified that the Respondent accepted \$20,000.00 and did no appreciable work in accordance with the Contract. Further, he paid '58 to repair the damage, but has not had the scope of the Contract completed. The Claimant wanted to add square footage to the Property and chose the Respondent based upon a referral.

The Respondent never obtained permits to start work on the Contract. The Respondent simply accepted money from the Claimant, and, according to his workers, kept it for himself. In the end, the Respondent performed no appreciable work under the Contract, and the Claimant is saddled with an over \$40,000.00 repair bill, and in return, received no improvement to the Property. 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.

COMAR 09.08.03.03B(3)(b).

Here, the Claimant paid the Respondent \$20,000.00 towards the Contract. The Respondent performed work that was useless and that structurally damaged the Property, and therefore, was valueless. Therefore, the Claimant's actual loss is \$20,000.00. Although the Claimant argued for at least \$23,000.00 due to the consequential damages and amount he had to pay to remedy them, the statute does not provide for such an award. Bus. Reg. § 8-405(e)(3) (Supp. 2023); *and see* COMAR 09.08.03.03B(1).



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) (Supp. 2023); COMAR 09.08.03.03B. In this case, the Claimant's actual loss is less than \$30,000.00. Therefore, the Claimant is entitled to recover the amount paid to the Respondent, \$20,000.00.

### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$20,000.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2023); COMAR 09.08.03.03B(3)(b). I further conclude that the Claimant is entitled to recover \$20,000.00 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(1) (Supp. 2023); COMAR 09.08.03.03B.

### **RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$20,000.00; 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>7</sup> and

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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").

<sup>7</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.

April 8, 2024  
Date Decision Issued

*William F. Burnham*  
William F. Burnham  
Administrative Law Judge

WFB/at  
#211120

**PROPOSED ORDER**

***WHEREFORE, this 11<sup>th</sup> day of June, 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***