

IN THE MATTER OF THE CLAIM	* BEFORE STEPHEN W. THIBODEAU,
OF CLARK HESSIE,	* 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 PAUL STAMBACH,	*
T/A LIBERTY GARAGES LLC,	* OAH No.: LABOR-HIC-02-23-24589
RESPONDENT	* MHIC No.: 23 (75) 322

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On February 3, 2023, Clark Hessie (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$50,000.00 for actual losses allegedly suffered as a result of a home improvement contract with Paul Stambach, trading as Liberty Garages, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).² On September 15, 2023, the MHIC issued a Hearing Order.

¹ The MHIC is under the jurisdiction of the Department of Labor (Department).
² Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Volume of the Maryland Annotated Code.

on the Claim. On September 15, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On October 31, 2023, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Hope Sachs, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented.

Prior to the hearing, on October 22, 2023, Edward M. Miller, attorney for the Respondent, filed a "Withdrawal of Response" on behalf of the Respondent. In that pleading, the Respondent stated through counsel that the Respondent "withdraws his response, intent to defend, and request for hearing" in this matter. As the MHIC ordered the hearing pursuant to the Claimant's claim, and not pursuant to any request by the Respondent, and 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. Code of Maryland Regulations (COMAR) 28.02.01.23A. On September 26, 2023, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States mail. COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for October 31, 2023, at 9:30 a.m., at the OAH. 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 United States Postal Service did not return the Notice to the OAH. 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. Based on these facts, as well as the "Withdrawal of Response" filed by the Respondent, 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., 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 exhibit(s) offered by the Claimant:

- Clmt. Ex. 1 - Contract with the Respondent, May 20, 2022
- Clmt. Ex. 2 - Claimant's Copy of Cashier's Check for \$50,000.00 to the Respondent, May 20, 2022
- Clmt. Ex. 3 - Copy of Cancelled Check for \$50,000.00, cashed by the Respondent, May 20, 2022
- Clmt. Ex. 4 - Emails between the Claimant and the Respondent, May 4, 2022 through July 27, 2022
- Clmt. Ex. 5 - Text messages between the Claimant and the Respondent, May 4, 2022 through June 24, 2022

I admitted the following exhibit(s) offered by the Fund:

- Fund Ex. 1 - Notice of Hearing, September 26, 2023, with attached MHIC Hearing Order, September 15, 2023
- Fund Ex. 2 - MHIC Licensing History for the Respondent, printed October 10, 2023
- Fund Ex. 3 - Letter from the MHIC to the Respondent, with attached claim form, February 15, 2023

The Respondent did not offer any exhibits.

Testimony

The Claimant testified and did not present other witnesses.

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 number 01-5932682.

2. On May 20, 2022, the Claimant and the Respondent entered into a contract for a 50 foot by 100 foot by 16 foot pole barn on the Claimant's property at 803 Streaker Road, Sykesville, Maryland (Contract).

3. The original agreed-upon Contract price was \$149,900.00.

4. On May 20, 2022, the Claimant paid the Respondent \$50,000.00.

5. The Respondent never provided a start date for the Contract.

6. As a result, the Claimant contacted the Respondent multiple times throughout May, June, and July 2022, asking for a start date. In addition, the Respondent did not sign the Contract until July 18, 2022.

7. Despite providing assurances to the Claimant that the Respondent had pulled permits for the Contract with Carroll County, the Respondent never obtained the necessary permits.

8. The Respondent never performed any work on the Contract.

9. The last contact the Claimant had with the Respondent was on July 27, 2022. In emails exchanged between the Claimant and the Respondent on that date, the Claimant asked the Respondent to provide the estimated start and end date for the pole barn project per the Contract.

The Respondent replied that he would forward the Claimant an addendum to the Contract with the relevant dates, but the Respondent never provided any such addendum.

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. 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 facts are undisputed. The Respondent was a licensed home improvement contractor at the time the Respondent entered into the Contract with the Claimant. The Respondent performed no work on the Contract, despite collecting and cashing a \$50,000.00 deposit check from the Claimant. By definition, the Respondent's action resulted in an incomplete home improvement project. In essence, the Respondent abandoned the Contract with the Claimant without performing any work.

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. 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 Respondent abandoned the Contract without doing any work. Accordingly, the following formula appropriately measures the Claimant's 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). As the Claimant paid the Respondent \$50,000.00 under the Contract, the Claimant's actual loss is \$50,000.00.

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.³ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss of \$50,000.00 exceeds \$30,000.00. Therefore, the Claimant's recovery is limited to \$30,000.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$50,000.00 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)(a). I further conclude that the Claimant is entitled to recover \$30,000.00 from the Fund. Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4).

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").

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;⁴ and

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

January 10, 2024
Date Decision Issued

Stephen W. Thibodeau.

Stephen W. Thibodeau
Administrative Law Judge

SWT/ja
#208842

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

PROPOSED ORDER

WHEREFORE, this 23rd day of February, 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***