

<p>IN THE MATTER OF THE CLAIM</p> <p>OF MICHAEL OSGOOD,</p> <p>CLAIMANT</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF MARTY MINTON</p> <p>T/A STONE GUYS, LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE CARLTON A. CURRY,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: LABOR-HIC-02-23-14503</p> <p>* MHIC No.: 23 (75) 560</p>
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PROPOSED DECISION

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STATEMENT OF THE CASE

On January 23, 2023, Michael Osgood (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$63,741.00 for actual losses allegedly suffered as a result of a home improvement contract with Marty Minton, trading as Stone Guys, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to 411 (2015 & Supp. 2024).² On May 10, 2023, the MHIC issued a Hearing Order on

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.

the Claim. On March 29, 2024, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On June 29, 2023, the OAH provided a Notice of Hearing (Notice) to the Claimant by United States mail. Code of Maryland Regulations (COMAR) 28.02.01.05C(1). The Notice stated that a hearing was scheduled for August 25, 2023, at 9:30 a.m., at the OAH, 11101 Gilroy Road, Hunt Valley, MD 21031. COMAR 09.08.03.03A(2). The Notice further advised the Claimant that failure to attend the hearing might result in “a decision against you.”

The Notice was returned to the OAH with the notation “unclaimed.” The Claimant did not notify the OAH of any change of address. COMAR 28.02.01.03E. The Claimant made no request for postponement prior to the date of the hearing. COMAR 28.02.01.16. I concluded that the Claimant received proper notice of the hearing. COMAR 28.02.01.05A, C.

On August 25, 2023, neither the Claimant nor anyone authorized to represent the Claimant appeared. Similarly, neither the Respondent nor anyone authorized to represent the Respondent appeared. Eric B. London, Assistant Attorney General, Department, was present to represent the Fund.

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 waited fifteen minutes past the scheduled hearing time for the Claimant and the Respondent to arrive; however, neither appeared and no one contacted the OAH Clerk’s Office to advise of any emergency preventing attendance. Accordingly, I went on the record and determined that the Claimant and the Respondent received proper notice and failed to appear at the hearing. I closed the record, having taken no testimonial or documentary evidence.

On September 29, 2023, the Claimant hand-delivered a request for a new hearing date and explained that he did not receive notice of the hearing because he temporarily vacated 5537

Franklin Boulevard, Churchton, Maryland during the pendency of divorce proceedings. The Claimant gained access to the property on September 25, 2023. The request further indicated that upon access to the property and locating correspondence from the MHIC and the OAH, the Claimant promptly contacted both agencies.

On October 2, 2023, my administrative assistant forwarded the Claimant's request to Mr. London. The Fund opposed the request, taking the position that the Claimant received proper notice and failed to inform the MHIC of a change of address. Thus, there is not a sufficient basis to reopen the record.

The decision whether to reopen the record for an administrative proceeding is entrusted to the administrative law judge's (ALJ) discretion.³ I found that Claimant provided a reasonable explanation for his failure to appear at the scheduled hearing. Taking all of this into consideration, by Letter Order dated October 26, 2023, I granted the Claimant's request to reopen the evidentiary record and ordered a new hearing date to be scheduled.⁴

On December 8, 2023, the OAH provided a Notice of Hearing (Second Notice) to the parties by United States mail. COMAR 28.02.01.05C(1). The Second Notice stated that a hearing was scheduled for February 16, 2024, at 9:30 a.m., at the OAH, 11101 Gilroy Road, Hunt Valley, MD 21031. COMAR 09.08.03.03A(2). On January 16, 2024, the Claimant requested a postponement due to previously scheduled professional travel. The postponement was granted on January 31, 2024.

On March 1, 2024, the OAH provided a Notice of Hearing (Third Notice) to the parties by United States mail. COMAR 28.02.01.05C(1). The Third Notice stated that a hearing was

³ See *Reier v. State Dep't of Assessments & Taxation*, 397 Md. 2, 18-19, 25-26 (2007) (holding that the ALJ did not abuse her discretion in refusing to reopen the proceeding for receipt of additional evidence); *Maryland State Police v. Zeigler*, 330 Md. 540 (1993) (holding that the administrative agency did not abuse its discretion in reopening the evidentiary record).

⁴ COMAR 28.02.01.11B (12) allows an ALJ to "issue any such orders as are necessary to procure procedural simplicity and administrative fairness and to eliminate unjustifiable expense and delay."

scheduled for April 29, 2024, at 9:30 a.m., on the Webex videoconferencing platform (Webex). COMAR 09.08.03.03A(2). After a scheduling conflict was identified for the April 29, 2024 hearing date, the hearing was again rescheduled.

On March 22, 2024, the OAH provided a Notice of Hearing (Fourth Notice) to the parties by United States mail. COMAR 28.02.01.05C(1). The Fourth Notice stated that a hearing was scheduled for June 7, 2024, at 9:30 a.m., on Webex. COMAR 09.08.03.03A(2). The Fourth Notice to the Respondent was returned to the OAH by the United States Postal Service as undeliverable due to "insufficient address."

On June 7, 2024, the Claimant appeared on Webex, representing himself. Jonathan Phillips, Assistant Attorney General, Department, represented the Fund. The Fund indicated it had an additional address for the Respondent, which was not previously provided to the OAH. I directed the Fund to provide the OAH with all available addresses for the Respondent within ten calendar days so that proper notice could be sent. On June 14, 2024, the Fund provided an additional address for the Respondent based on a search of the records of the Maryland Motor Vehicle Administration.

On July 10, 2024, the OAH provided a Notice of Hearing (Fifth Notice) to the parties by United States mail. COMAR 28.02.01.05C(1). The Fifth Notice stated that a hearing was scheduled for September 19, 2024, at 9:30 a.m., on Webex. COMAR 09.08.03.03A(2).

On September 19, 2024, I held a hearing on Webex as scheduled. Bus. Reg. §§ 8-407(a), 8-312; COMAR 28.02.01.20B(1)(b). The Claimant represented himself. Jonathan Phillips, Assistant Attorney General, Department, represented the Fund. 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. COMAR 28.02.01.23A.

The OAH sent the Fifth Notice of Hearing to the Respondent by certified mail and first-class mail. Bus. Reg §§ 8-312(d), 8-407(a); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for September 19, 2024, at 9:30 a.m., via Webex. 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 Fifth Notice to the OAH, and Respondent did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E. I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter. 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. 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 exhibits offered by the Claimant:

- Clmt. Ex. 1 - Contract between the Claimant and the Respondent, May 28, 2021
- Clmt. Ex. 2 - Partial bank statement indicating the purchase of a bank check in the amount of \$38,000.00 and a bank check in the amount of \$2,000.00, dated June 1, 2021
- Clmt. Ex. 3 - Check No. 1609 from the Claimant to the Respondent in the amount of \$6,200.00, dated November 2, 2021

Clmt. Ex. 4 - Check No. 1611 from the Claimant to Merc Construction in the amount of \$17,541.00, dated March 3, 2022

Clmt. Ex. 5 - Emails between the Claimant and the Respondent, May 28, 2021 - May 9, 2022

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Hearing, dated July 10, 2024

Fund Ex. 2 - Hearing Order from the MHIC, dated May 10, 2023

Fund Ex. 3 - Home Improvement Claim Form, received January 23, 2023

Fund Ex. 4 - MHIC License History of the Respondent as of September 15, 2024

The Respondent did not appear or offer any exhibits.

Testimony

The Claimant testified and did not present other witnesses.

The Fund presented no testimony.

The Respondent did not appear or offer 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 01-119854.

2. At all times relevant, the Claimant resided at 5537 Franklin Boulevard in Churchton, Maryland.

3. On May 28, 2021, the Claimant and the Respondent entered into a contract to "Add a second story addition on a [one] story house with a master suite bathroom while also closing in the backyard porch and extending it [approximately] 2-3'." (Contract). (Clmt. Ex. 1, pg. 1).

4. The original agreed-upon Contract price was \$123,185.00.

5. The Contract stated that work would begin in May or June 2021 and would be completed within 120 days.
6. On June 1, 2021, the Claimant paid the Respondent \$40,000.00 as a deposit under the Contract.
7. On November 2, 2021, the Claimant paid the Respondent an additional \$6,200.00 for architectural drawings. (Clmt. Ex. 3).
8. At the direction of the Respondent, the Claimant paid \$17,541.00 to Merc Construction to fabricate trusses under the Contract. (Clmt. Ex. 4).
9. On May 9, 2022, the Respondent informed the Claimant that Anne Arundel County requested that the Claimant merge his lots so that work under the Contract could proceed. On May 24, 2022, the Claimant filed the necessary paperwork with the County to merge the lots.
10. The Claimant has had no communication with the Respondent since May 2022. The Claimant repeatedly called and emailed the Respondent's business, and the email bounced back, and the telephone number was disconnected. The Claimant and was not able to receive a response as to why the work would not proceed.
11. No work was performed under the Contract.
12. On January 23, 2023, the Claimant filed a Claim with the MHIC.

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 (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.

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. 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 parties did not enter into a valid agreement to submit their disputes to arbitration. *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & 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 Claimant testified he paid a total of 63,741.00 for work under the Contract and that no work was performed. (Clmt. Exs. 2, 3, 4). The Claimant testified that he paid the Respondent an initial deposit of \$40,000.00 via a bank check. He then paid \$6,200.00 for architectural design. Finally, he paid \$17,541.00 to Merc Construction for trusses at the direction of the Respondent. Further, the Claimant testified that he last communicated with the Respondent in May 2022 regarding the project, after being informed that Anne Arundel County was requesting the lots be merged so that work under the Contract could begin. I found the Claimant’s testimony credible, supported by the documentary evidence, and uncontradicted. The Claimant

made the required deposit under the Contract and was waiting for the work to start as promised. It has been over three years since the proposed start date of May or June 2021 and the Respondent has failed to return to the home to start any work. The Respondent has also failed to respond to the Claimant's attempts to ascertain the status of the project. The Respondent's failure to perform any work on the Claimant's home after receiving all the requisite payments up to this point under the Contract is an abandonment of the job and the Claimant is eligible for compensation from the Fund. *Id.* § 8-401.

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. 2024); 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).

The Fund argued that the Claimant met his burden of demonstrating that the Respondent performed an inadequate or incomplete home improvement, as no work was performed under the Contract. The Fund further argued that the Claimant is entitled to all monies paid to the Respondent, subject to statutory limitations.

Upon review of the evidence, I concur with the Claimant and the Fund in that the Claimant is entitled to the monies paid to the Respondent and to Merc Construction at the

direction of the Respondent under the terms of the Contract, \$63,741.00, subject to statutory limitations.

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.⁵ Bus. Reg. § 8-405(e)(1), (5) (2024); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss of \$63,741.00 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 loss of \$63,741.00 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 \$30,000.00 from the Fund. Bus. Reg. § 8-405(e)(1), (5) (2024); COMAR 09.08.03.03B(4).

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;⁶ and

⁵ 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").

⁶ 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.

December 17, 2024
Date Decision Issued

Carlton A. Curry
Carlton A. Curry
Administrative Law Judge

CAC/at
#215570

PROPOSED ORDER

WHEREFORE, this 8th day of May, 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.

Wm. Bruce

Quackenbush

Wm. Bruce Quackenbush

Chairman

Panel B

*MARYLAND HOME IMPROVEMENT
COMMISSION*