

IN THE MATTER OF THE CLAIM
OF SCOTT AND SUSAN
FORCHHEIMER,

CLAIMANTS

AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND

FOR THE ALLEGED ACTS OR
OMISSIONS OF CHRISTOPHER

CAHILL, T/A

BOTANICAL DECORATORS, INC,

RESPONDENT

* BEFORE ALECIA FRISBY TROUT,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS

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* OAH No.: LABOR-HIC-02-24-07736

* MHIC No.: 23 (75) 564

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STATEMENT OF THE CASE

On August 18, 2023, Scott and Susan Forchheimer (Claimants) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$147,536.80 for actual losses allegedly suffered as a result of a home improvement contract with Christopher Cahill, trading as Botanical Decorators, Inc. and Cahill Land Design (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 411 (2015 & Supp.

¹ The MHIC is under the jurisdiction of the Department of Labor (Department).

2023).² On March 18, 2024, the MHIC issued a Hearing Order on the Claim and forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On July 15, 2024, I held an in-person hearing at the OAH in Rockville, Maryland. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Hope Sachs, Assistant Attorney General, Department, represented the Fund. Jack McKenna, Esq. represented the Claimants. The Respondent failed to appear for the hearing.

On April 5, 2024, the OAH mailed a Notice of Hearing (Notice) to the Respondent by certified mail and first-class mail. *Id.* §§ 8-312(d), 8-407(a); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for July 15, 2024, at 10:00 a.m. at the OAH in Rockville, Maryland. It advised the Respondent that failure to attend the hearing might result in “a decision against you.” The Notice sent to the Respondent via both certified mail and regular mail, and both were returned to the OAH as undeliverable. The OAH Notice was mailed to the Respondent’s address of record with the MHIC. Neither the MHIC nor the OAH have another business address for the Respondent. I waited until 10:15 a.m. The Respondent did not appear. 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 determined that the Respondent received proper notice and proceeded in the Respondent’s absence. *See* COMAR 28.02.01.05A, C; *see also* Md. Code Ann., Bus. Reg. § 8-309 (“Within 10 days, a licensee shall notify the [MHIC] of a change of control in ownership, management, address, or trade name.”).

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.,

² Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Volume of the Maryland Annotated Code.

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:

- Clmt. Ex. 1 Contract, January 7, 2022
- Clmt. Ex. 2 Email titled "Citi Private Bank Alerts," January 12, 2022
- Clmt. Ex. 3 Email chain titled, "Re: Landscape Design Agreement," January 12, 2022
- Clmt. Ex. 4 Email chain titled, "Re: TIME SENSITIVE – Project @ 6808 Millwood Road," September 30, 2022
- Clmt. Ex. 5 Email chain titled, "Re: Demand Letter – 6808 Millwood Road, Bethesda MD," October 12, 2022
- Clmt. Ex. 6 Circuit Court for Montgomery County, Maryland, Complaint, October 28, 2022
- Clmt. Ex. 7 MHIC Complaint Form, October 28, 2022
- Clmt. Ex. 8 MHIC Complaint Form, August 18, 2023

No documents were submitted on behalf of the Respondent.

I admitted the following exhibits offered by the Fund:

- GF Ex. 1 Notice of Hearing, April 5, 2024; Hearing Order issued March 18, 2024
- GF Ex. 2 Licensing history for Respondent, printed on July 3, 2024
- GF Ex. 3 Letter from MHIC to Respondent attaching claim form, October 25, 2023

Testimony

The Claimant testified on his own behalf. The Respondent was not present to testify or offer any witnesses. The Fund did not offer any witness 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 01-0085309 (individual) and 05-121756 (corporate).
2. On January 12, 2022, the Claimants and the Respondent entered into a contract in which the Claimants agreed to pay the Respondent \$478,456.00 to construct a swimming pool, walkways, patio, gilling station, screened porch, deck, lower-level lanai, gas firepit, fencing, updated landscaping, and irrigation to the Claimants' backyard. (Contract).
3. The Contract provided that the Claimants would pay the Respondent an initial \$2,000.00 design fee; and \$143,536.00 upon acceptance of the Contract, along with a design fee balance of \$2,000.00.
4. The Claimants paid the initial \$2,000.00 design fee in or about November 2021.
5. On January 12, 2022, the Claimant paid the Respondent \$145,536.80 via a debit card bank transfer.
6. At the initiation of the Contract, the Respondent told the Claimants that work would begin in the early summer 2022 and be completed by October 2022.
7. In May 2022, the Claimants reached out to the Respondent to confirm the start date for the project and learned the work would be delayed until June 2022, and would take four to five months to be completed.

8. On June 10, 2022, the Claimants reached out to the Respondent again to confirm the start date for the project and learned that the work was scheduled to start on June 20, 2022 with the dig date for the pool scheduled in the week after July 4, 2022.

9. The Respondent did not begin work.

10. On or about July 11, 2022, the Claimants met with a representative of the Respondent to select tiles for the pool.

11. After July 11, 2022, the Claimants continued to contact the Respondent about the start date for their project. On or about August 10, 2022, the Respondent replied and provided a start date of August 29, 2022. Later on the same day, the Respondent changed the start date to late September 2022.

12. The Respondent did not begin work.

13. On September 29, 2022, the Claimants emailed the Respondent and asked for either an immediate change to the way the Respondent was communicating and conducting the work under the Contract, or a full refund of the \$147,536.80 to be paid by 5:00 p.m. on October 3, 2022.

14. On or about October 4, 2022, the Claimants engaged Mr. McKenna who communicated with the Respondent via email between October 4, 2022 and October 12, 2022, demanding a full refund. The Respondent responded that he was "making every effort to resolve the matter in a timely fashion."

15. The Respondent did not complete any work under the Contract or return any money to the Claimants.

16. On or about October 28, 2022, the Claimants filed a Complaint in Circuit Court for Montgomery County against the Respondent, seeking return of the deposit paid to the

Respondent. On a date not certain in the record, the Claimants voluntarily dismissed the Circuit Court Complaint.

DISCUSSION

The Claimants have 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. 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 Claimants have proven eligibility for compensation.

Eligibility for Compensation

The evidence in this case establishes no legal impediments barring the Claimants from filing a claim under section 8-405 of the Business Occupations Article. The Respondent was a licensed home improvement contractor at the time of the contract. The Claim was timely filed, there is no pending court claim for the same loss, and the Claimants did not recover the alleged losses from any other source. Bus. Reg §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2023). The Claimants reside in the home that is the subject of the claim, and do not own more than three dwellings. *Id.* § 8-405(f)(2) (Supp. 2023). The Claimants are not relatives, employees, officers,

or partners of the Respondent, and are not related to any employee, officer, or partner of the Respondent. *Id.* § 8-405(f)(1) (Supp. 2023).

The Claimants argued, and the Fund agreed, that the Claimants suffered an actual loss incurred as a result of the Respondent's acts or omissions, entitling them to compensation from the Fund. Specifically, the Claimants argued that, despite being paid \$147,536.80, the Respondent failed to perform any work to construct a swimming pool, walkways, patio, gilling station, screened porch, deck, lower-level lanai, gas firepit, fencing, updated landscaping, and irrigation in the Claimants' backyard as contracted. The Claimants produced the Contract that required the Respondent to complete those projects. The Respondent performed no work under the Contract.

Based on the Claimant's testimony and the documentation of emails between the Claimants, their attorney, and the Respondent, the Claimants' assertion that the Respondent performed no work is credible. Therefore, the Claimants have established that they suffered an actual loss due to an incomplete home improvement. Having found eligibility for compensation, I must determine the amount of the Claimants' actual loss and the amount, if any, that the Claimants are entitled to recover.

Award

The Claimants seeks the reimbursement of the \$147,536.80 deposit and design fee they paid the Respondent. The Fund agrees the Claimants are entitled to recover the total of the deposit the Claimants paid the Respondent to complete the project, \$143,536.80, but not the \$4,000.00 design fee as those designs were completed. 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). I find that the Claimants have proven they are entitled to receive the deposit amount and the additional \$4,000.00 design fee as

the designs were specific to the quality and condition of the Claimant's land and current vegetation at the time the Contract was made, and as the natural environment is subject to constant change due to things such as plant growth, death and erosion, I find the plans will not be useful to the Claimants over time. Based on that finding, I determine that the Claimants' loss is akin to that of a Claimant when the relevant Respondent has not done any work under the Contract.

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

Here, the Respondent abandoned the Contract after providing design plans that are no longer useful to the Claimant, and without performing any additional work. Accordingly, the following formula appropriately measures the Claimants' 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 Claimants submitted proof that they paid the Respondent \$147,536.80.00 under the Contract. Therefore, the Claimant's actual loss is \$147,536.80.

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 Claimants' actual loss is equal to the amount paid to the Respondent, which is more than \$30,000.00. Therefore, the Claimants are entitled to recover the statutory maximum of \$30,000.00.

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").

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimants have sustained an actual and compensable loss of \$147,536.80 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 Claimants are entitled to recover \$30,000.00 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(a) (Supp. 2023); COMAR 09.08.03.03B(3)(a).

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.

September 27, 2024
Date Decision Issued

Alecia Frisby Trout

Alecia Frisby Trout
Administrative Law Judge

AFT/ja
#214023

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

PROPOSED ORDER

WHEREFORE, this 28th day of February, 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.

Chandler Louden

Chandler Louden

Panel B

MARYLAND HOME IMPROVEMENT

COMMISSION