

IN THE MATTER OF THE CLAIM	* BEFORE GWENLYNN D'SOUZA,
OF EUGENE KRICHEVSKY,	* 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	*
CHRISTOPHER CAHILL,	*
T/A CAHILL DESIGN BUILD	* OAH No.: LABOR-HIC-02-24-11917
RESPONDENT	* MHIC No.: 23 (75) 847

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On March 15, 2023, Eugene Krichevsky (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$163,868.00 for actual losses allegedly suffered as a result of a home improvement contract with Christopher Cahill, trading as CJ Cahill Design Build² (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to 8-411 (2015 & Supp. 2024).³ On May 1, 2024, the MHIC issued a Hearing

¹ The MHIC is under the jurisdiction of the Department of Labor (Department).
² CJ Cahill Design Build is the name on the Contract at issue.
³ Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Volume of the Maryland Annotated Code.

Order on the Claim. That same day, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On August 26, 2024, I held a hearing at the OAH in Rockville, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Eric London, Assistant Attorney General, represented the Fund. The Claimant was self-represented. The Respondent was self-represented.

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); Code of Maryland Regulations (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 Claimant and Respondent, signed July 13, 2021
- CL Ex. 2 - Schedule of Progress Payments, with copies of checks attached, various dates
- CL Ex. 3 - Notice of Bankruptcy for CJ Cahill Design Build, filed on November 7, 2022
- CL Ex. 4 - Contract between Claimant and Churchill Classics, dated October 18, 2022
- CL Ex. 5 - Email from Cahill Companies to the Respondent, dated September 28, 2022
- CL Ex. 6 - Bills for materials, various dates

The Respondent did not submit exhibits for admission into evidence.

I admitted the following exhibits offered by the Fund:

GF Ex. 1 - Notice of Hearing, dated May 31, 2024

GF Ex. 2 - Hearing Order, dated May 1, 2024

GF Ex. 3 - Certification by Custodian of Records, dated July 22, 2024

GF Ex. 4 - Home Improvement Claim Form, dated March 7, 2023, received March 14, 2023

GF Ex. 5 - MHIC Letter to Respondent Regarding Claimant's claim, dated April 24, 2023

Testimony

The Claimant testified and presented no other witnesses. The Respondent testified and presented no other witnesses. The Fund did not present witnesses.

PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. At all relevant times, the Respondent was a licensed home improvement contractor with license numbers 01-85309 and 05-129799.⁴
2. At all relevant times, the Claimant owned and resided in a home located in Bethesda, Maryland (the Residence).⁵
3. On July 13, 2021, the Claimant and the Respondent entered into a contract to construct a poolhouse at the Residence (Contract).⁶ The Contract provided that the Respondent would furnish materials for the poolhouse.
4. The Contract price was \$400,670.00.⁷
5. In January 2022, the Respondent began work under the Contract.

⁴ GF Ex. 3.

⁵ CL Ex. 1.

⁶ CL Ex. 1.

⁷ CL Ex. 1.

6. From January 2022 to September 2022, the Claimant paid the Respondent amounts totaling \$265,405.00⁸ towards the Contract.⁹

7. In September 2022, the Respondent ceased work under the Contract. At that time, the work was only partially completed, with masonry and tilework having been performed.

8. The Contract work that remained to be performed was cabinetry installation, floor finishing, interior painting and finishes completion, exterior finishes completion, appliance installation, trade punch and lighting installation, final punch list, and paint touch-up.¹⁰

9. In September 2022, certain subcontractors and suppliers had not been paid by the Respondent.¹¹ In order to avoid the imposition of mechanics' liens on the residence, the Claimant paid a total of \$34,710.00, on CJ Cahill Design Build's behalf, to the following subcontractors: Artisan Interiors, MC Plumbing, Pedro Torres (a tiler), Inmar Bonilla (a mason), and an electrician.¹²

10. The Claimant paid \$16,485.70, on CJ Cahill Design Build's behalf, to suppliers for materials.¹³

11. The Claimant retained Churchill Classics, a licensed contractor, to perform drywall repair at the poolhouse and complete the interior and exterior work under the Contract.¹⁴ Churchill Classics required payments at following stages: trim completion, painting completion, flooring completion, cabinets set, and completion.¹⁵

⁸ The Claimant acknowledged he paid more for the work performed than expected under the Contract, but that does not impact this decision.

⁹ CL Ex. 2.

¹⁰ CL Ex. 2.

¹¹ CL Exs. 5, 6.

¹² CL Ex. 5. The exact amounts due to each subcontractor is not reflected in the evidence and testimony presented. The name of the electrician is illegible.

¹³ CL Ex. 6.

¹⁴ CL Ex. 4.

¹⁵ CL Ex. 4.

12. The Claimant paid amounts totaling \$201,694.00 to Churchill Classics for the drywall repair work and completion of the Contract.¹⁶

DISCUSSION

Applicable Law

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).

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) (Supp. 2024); Bus. Reg. § 8-408(b)(1). The Claimant resides in the home that is the subject of the claim and does not own more than three dwellings. Bus. Reg. § 8-405(f)(2) (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. Bus. Reg. § 8-405(f)(1) (Supp. 2024).

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

¹⁶ CL Ex. 4.

incomplete home improvement.” Bus. Reg. § 8-401 (Supp. 2024). A claimant may not unreasonably reject good faith efforts by the Respondent to resolve the claim. Bus. Reg. § 8-405(d) (Supp. 2024). For the following reasons, I find that the Claimant has proven eligibility for compensation.

Analysis

The Respondent Performed an Incomplete Home Improvement

The Claimant showed that the Respondent failed to complete all the work under the Contract and that the Claimant did not reject efforts to resolve the Claim. The Claimant’s testimony about incomplete work was confirmed by the Respondent. The Respondent explained his business ceased work and did not enforce the arbitration clause in the Contract because the business filed for bankruptcy. The evidence demonstrates that the Respondent provided an incomplete home improvement, and the Claimant is eligible for compensation from the Fund.

The Amount of Actual Loss to the Claimant

I must determine the amount of the Claimant’s actual loss and the amount, if any, that the Claimant is entitled to recover. The MHIC’s regulations provide three formulas to measure a claimant’s actual loss, depending on the status of the contract work. In this case, the Respondent performed some work under the Contract, and the Claimant sought another contractor to complete the work. Accordingly, the following formula measures the Claimant’s actual loss appropriately:

If the contractor did work according to the contract and the claimant has solicited or is soliciting another contractor to complete the contract, the claimant’s actual loss shall be the amounts the claimant has paid to or on behalf of the contractor under the original contract, added to any reasonable amounts the claimant has paid or will be required to pay another contractor to repair poor work done by the original contractor under the original contract and complete the original contract, less the original contract price. If the Commission determines that the original

contract price is too unrealistically low or high to provide a proper basis for measuring actual loss, the Commission may adjust its measurement accordingly.

COMAR 09.08.03.03B(3)(c).

The payments made by the Claimant to or on behalf of the Respondent and by the Claimant to the replacement contractor were undisputed and supported by evidence. The calculation of the Claimant's actual loss is:

Total Amount paid by the Claimant to the Respondent	265,405.00
Total Amount paid by the Claimant on the Respondent's behalf (\$34,710.00 + \$16,485.70)	51,195.70
Add reasonable amount paid to another contractor to repair poor work under the original Contract	201,694.00
Subtotal	518,294.70
Subtract Contract Price	-400,670.00
Amount of Actual Loss to the Claimant	117,624.70

A claimant's recovery from the Fund 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.¹⁷ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2024); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss of \$117,624.70 exceeds the \$30,000.00 limit. 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 \$30,000.00 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)(c). I further conclude that the Claimant is entitled to recover \$30,000.00 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5) (Supp. 2024); COMAR 09.08.03.03B(3).

¹⁷ Effective July 1, 2022, the cap of \$30,000.00 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;¹⁸ and

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

November 20, 2024
Date Decision Issued

Gwenlynn D Souza

Gwenlynn D'Souza
Administrative Law Judge

GD/kh
#213641

¹⁸ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 21st day of March, 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.

Michael Shilling

Michael Shilling

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***