

IN THE MATTER OF THE CLAIM	* BEFORE WILLIS GUNTHER BAKER,
OF MELANIE MOMONGAN,	* 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 KIMBERLY SMITH,	* OAH No.: LABOR-HIC-02-24-02050
T/A MIRACLE CONTRACTORS LLC	* MHIC No.: 23 (75) 960
RESPONDENT	*

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On May 23, 2023, Melanie Momongan (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$65,927.00 for actual losses allegedly suffered as a result of a home improvement contract with Kimberly Smith, trading as Miracle Contractors LLC (Respondent).² Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).³ On December 29, 2023, the MHIC issued a

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

² References to the Respondent include their employees and subcontractors.

³ Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Volume of the Maryland Annotated Code.

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

On April 22, 2024, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Kris King, Assistant Attorney General (AAG), Department, represented the Fund. The Claimant was self-represented. The Respondent did not appear, but her brother, Brian Carlito Mitchell,⁴ appeared and attempted to represent the Respondent.

Prior to the start of the hearing Mr. Mitchell and AAG King had a conversation in the hall regarding Mr. Mitchell appearing for the Respondent. AAG King stated that Mr. Mitchell did not identify himself at any time during that conversation as an officer of the LLC. Mr. Mitchell then came before me and claimed to be the President of the LLC, but was unable to produce any document to validate the claim through public records or any other accessible documentation.

Mr. Mitchell argued that the Respondent did not receive the notice of hearing until April 16 or 17, 2024 because the Respondent had moved to a new location in March 2024. The hearing notice was mailed to the Respondent's address on record with the MHIC on February 1, 2024 by certified and U.S. mail. Neither mailing was returned as undeliverable. The Respondent did not contact the OAH to request a postponement of the hearing. Mr. Mitchell requested a postponement at the time of the hearing, which was denied, as he is not a party. Mr. Mitchell stated that Ms. Smith was in Georgia and was not available to attend the hearing. Since neither the Respondent nor a legally sufficient representative appeared after receiving proper notice, I proceeded with the hearing. Mr. Mitchell remained to observe 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)

⁴ The Claimant was familiar with "Carlito Mitchell" as the person in charge of the jobsite and the person she dealt with on the job. She did not know his first name was Brian.

28.02.01.23A. On February 1, 2024, the OAH provided a Notice of Hearing (Notice) 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 April 22, 2024 at 9:30 a.m. at the OAH in Hunt Valley, Maryland. 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 either Notice to the OAH. The Respondent did not notify the MHIC or the OAH of any change of mailing address.⁵ 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. 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 for home extension between the parties, November 2, 2021 (Contract)
- Clmt. Ex. 2 - KCL Electric LLC statement regarding completed electrical work, January 27, 2023

⁵ On April 29, 2024, the OAH received a change of address for the business address only from the Respondent.

- Clmt. Ex. 3 - Addendum to Contract for breezeway, change to charges, credit for direct pay to contractors, October 23, 2023 (Addendum)
- Clmt. Ex. 4 - Text from Carlito Mitchell to the Claimant, November 29, 2023
- Clmt. Ex. 5 - Spreadsheet of payments made by the Claimant for the project, undated
- Clmt. Ex. 6 - Colvin Properties Inspection Report, Inspection February 8, 2024
- Clmt. Ex. 7 - CGC Builders, LLC Estimate, February 27, 2024
- Clmt. Ex. 8 - Email between the parties, October 27-28, 2021
- Clmt. Ex. 9 - Photograph of electric line markings and hole, February 2022
- Clmt. Ex. 10 - Carroll County Department of Public Works (Carroll County) Permit and Inspection Report, November 22, 2021 to October 27, 2023
- Clmt. Ex. 11 - Three photographs of construction at various stages, undated
- Clmt. Ex. 12 - Letter to the Respondent from the Office of the Attorney General Consumer Protection Division (CPS), November 6, 2023
- Clmt. Ex. 13 - BGE Extension/Relocation Contract and supporting documents, multiple dates
- Clmt, Ex. 14 - CPS letter to the Claimant, November 20, 2023
- Clmt. Ex. 15 - Carroll County Owner/Contractor Affidavit, November 2, 2021
- Clmt. Ex. 16 - Carroll County Residential Code Compliance Guidelines, undated
- Clmt. Ex. 17 - Photograph of exterior of addition during construction, undated

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Notice of Hearing, February 1, 2024
- Fund Ex. 2 - MHIC Hearing Order, December 29, 2023
- Fund Ex. 3 - Respondent's Licensing Information, printed April 17, 2024
- Fund Ex. 4 - Fund Claim Form, May 19, 2023
- Fund Ex. 5 - MHIC Notice to the Respondent of the Claim, May 31, 2023

The Respondent was not present and did not offer any exhibits.

Testimony

The Claimant testified and presented the following witnesses: Ronald Sites, Licensed Master Electrician; and Stuart Colvin, Licensed Builder, Home Inspector, and Home Improvement Contractor.

The Fund did not present any witnesses.

The Respondent was not present and did not present 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 5923266.
2. On October 29, 2021, the Claimant and the Respondent entered into a contract for an addition to an existing home to include a 24 x 24 foot garage, a mudroom, and a playroom to connect to the existing house. (Contract).
3. The original agreed-upon Contract price was \$121,500.00. The parties entered into an Addendum on October 23, 2023, that provided four additional draws of \$2,500.00 each for an additional \$10,000.00 cost; and credits for work not completed or needing correction, revising the final draw from \$20,250.00 to \$16,630.00, resulting in a Contract and Addendum cost of \$127,880.00.
4. The Respondent was aware that the Claimant sought to have the work completed by January 2022, and stated in an email that the project could be completed in three months, by January 2022. (Clmt. Ex. 8).
5. The Claimant paid the Respondent the following amounts:

11/1/2021:	\$40,500.00
12/23/2021:	\$40,500.00
11/21/2022:	\$20,250.00
10/20/2023:	\$ 2,500.00

footers were compromised due to the delay between digging and adding concrete and the concrete was poured in the rain. Carroll County also indicated that the footers were not consistent with the blueprints.

10. In July 2022, the concrete was poured for the garage slab. No work occurred in August. In September 2022, the footers were dug for the addition and the garage was framed. In October 2022, trusses were installed, the roof was started, and the windows were installed, but one was broken.

11. Sometime in Fall 2022, the Respondent contacted the Claimant to advise that there was \$20,000.00 in overages that the Claimant needed to cover before work would proceed. The Claimant refused and the Respondent walked off the job.

12. In January 2023, the Claimant learned that the Respondent had only paid its subcontractor electrician KCL its initial deposit of \$2,000.00 and not for the additional work due to the BGE service line.

13. In May 2023, the Claimant changed the permit with Carroll County to list herself as the general contractor so she would receive communications from Carroll County. The Claimant learned at that time that the work done by the Respondent had not passed inspection.

14. Sometime in the summer of 2023, BGE notified the Claimant that she could no longer have the temporary line because too much time had passed and that she needed to have her original line reconnected, or the power would be shut off.

15. In October 2023, the Claimant asked the Respondent to come to her home to review the project because she needed to have power at her home and wanted to get the project finished. The parties entered into an Addendum to the Contract on October 23, 2023, which called for additional payments by the Claimant to the Respondent and payments directly to the subcontractors. (Clmt. Exs. 3 and 4).

16. On January 10, 2024, Carroll County came to inspect, but the addition did not pass inspection. The Respondent agreed to come on January 11, 2024, to go over things that still needed to be done but did not show up and never returned.

17. On February 8, 2024, Stuart Colvin of Colvin Properties came to inspect the Respondent's work at the Claimant's property and to provide a report of what needed to be done to pass inspection based on the Contract and Addendum. The Report noted issues with: the electrical work and HVAC wiring; the roofing ridge vent and flashing; installation of flooring, siding, and railings; concrete garage slab lacking proper grade, and other concerns. (Clmt. Ex. 6).

18. Stuart Colvin also provided an estimate from his HIC contractor business estimating the cost of repairs to complete and repair the scope of the original Contract and Addendum at \$42,790.00. (Clmt. Ex. 7).

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. 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 Respondent was a licensed home improvement contractor at the time the Respondent entered into the Contract with the Claimant. 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. 2023). 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. 2023). 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. 2023). 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. 2023).

The Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2023). The Claimant was clear from the beginning that she wanted the job to be completed within three months and the Respondent led her to believe that it could be. Three years later and the addition is still not complete, despite the Claimant allowing the Respondent to return after walking off several times and paying more than the original Contract price for work included in the Contract. The Claimant also sought the assistance of the Office of the Attorney General’s Consumer Protection Division to try to mediate the conflict but the Respondent did not reply.

The Respondent performed unworkmanlike, inadequate, and incomplete home improvements. The project started off late and badly, with the Respondent uncovering the Claimant’s electric line at the initiation of the renovation. This created a work stoppage that put

the job behind six months from the start. The Respondent would come for a few days then disappear for weeks, resulting in piecemeal and haphazard construction that missed items like siding moisture barriers, a roof ridge vent, flashing, proper grading of the garage and hardscape, and proper installation of HVAC, railing, siding, and flooring.

Ronald Sites, an electrician, testified about the issues when he came in to finish at the jobsite as a favor to the original electrician. Sites noted the concern about the temporary electric service and the requirement that the HVAC work be completed under his permit, which was not done correctly, causing the inspection to fail.

Stuart Colvin completed a home inspection and estimated the cost of repair and completion. He noted that some items were defective and not to code, others were not to industry standards, others were incomplete, unfinished, or needed cosmetic repairs. Colvin noted that the "big ticket" item was the garage slab that was poured completely level, when it is required to slope to the outside so the garage can drain in the event of spilled flammable fluids. He opined that there is no other reasonable method to bring the slab within industry standards than to replace it. 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). The MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

The Respondent performed some work under the Contract, and the Claimant intends to retain other contractors to complete or remedy that work. Accordingly, the following formula appropriately measures the Claimant's actual loss:

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 original Contract price was \$121,500.00. The Addendum both added and took away some things, so it added \$10,000.00 in expense, but reduced the final draw by \$3,620.00, resulting in a Contract and Addendum cost of \$127,880.00.⁷ The Claimant paid the Respondent \$114,250.00; paid the Respondent's subcontractors directly \$13,485.00; and the cost to repair and complete the Contract is \$42,790.00; totaling \$170,525.00.

Amount paid to or on behalf of the Respondent		\$127,735.00
Amount to Repair or Complete	+	<u>\$ 42,790.00</u>
Subtotal		\$170,525.00
Contract and Addendum Price	-	<u>\$127,880.00</u>
<u>ACTUAL LOSS</u>		\$ 42,645.00

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.⁸ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss of \$42,645.00 exceeds \$30,000.00. Therefore, the Claimant's recovery is limited to \$30,000.00.

⁷ \$121,500.00 + \$10,000.00 - \$3,620.00 = 127,880.00.

⁸ 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 Claimant has sustained an actual and compensable loss of \$42,645.00 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)(c). 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).

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;⁹ and

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

July 10, 2024
Date Decision Issued

Willis Gunther Baker

Willis Gunther Baker
Administrative Law Judge

WGB/ckc
#212773

⁹ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 8th day of November, 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.

Robert Altieri

Robert Altieri

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***

**IN THE MATTER OF THE CLAIM OF * MARYLAND HOME
MELANIE MOMONGAN * IMPROVEMENT COMMISSION
AGAINST THE MARYLAND HOME *
IMPROVEMENT GUARANTY FUND * MHIC CASE NO. 23(75)960
FOR THE ACTS OR OMISSIONS OF * OAH CASE NO. LABOR-HIC-
KIMBERLY SMITH AND MIRACLE * 02-24-02050
CONTRACTORS, LLC ***

* * * * *

FINAL ORDER

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”). Following the evidentiary hearing, the ALJ issued a Proposed Decision concluding that the homeowner, Melanie Momongan (“Claimant”) suffered an actual loss as a result of the acts or omissions of Kimberly Smith and Miracle Contractors, LLC (collectively, “Contractor”). *ALJ Proposed Decision* p. 12. In a Proposed Order, the Maryland Home Improvement Commission (“MHIC” or “Commission”) affirmed the Proposed Decision of the ALJ to grant an award of \$30,000 from the Home Improvement Guaranty Fund. The Contractor subsequently filed exceptions to the MHIC Proposed Order.

On March 20, 2025, a three-member panel (“Panel”) of the MHIC held a remote hearing on the exceptions filed in this matter. Samantha Smith, Esq., represented the Contractor. The Claimant participated without counsel. Assistant Attorney General Catherine Villareale appeared at the exceptions hearing on behalf of the Guaranty Fund. The Panel entered the following preliminary exhibits as part of the record of the exceptions hearing without objection: 1) hearing notice; 2) transmittal letter, ALJ Proposed Decision, and MHIC Proposed Order; and 3) Contractor’s exceptions. No party produced a copy of the transcript of the hearing before the ALJ. Both parties filed requests to present new evidence but failed to demonstrate to the Panel that the evidence they sought to present was relevant and material and that the evidence could not have been discovered before the ALJ hearing with the exercise of due diligence. Therefore, the Panel’s

review of the record was limited to the preliminary exhibits for the exceptions hearing, the OAH Proposed Decision, and the exhibits offered as evidence at the OAH hearing. COMAR 09.01.03.09(G) - (I).

The claim in this proceeding relates to a contract between the parties for the construction of an addition to the Claimant's home. The ALJ found that the Contractor's performance under the contract was unworkmanlike, inadequate, and incomplete. *ALJ's Proposed Decision* p. 9. Kimberly Smith did not appear at the OAH hearing. Brian Carlito Mitchell attended the OAH hearing, sought to represent the Contractor, and requested that the hearing be postponed. Mr. Mitchell told the ALJ that he was the President of Miracle Contractors, LLC, but did not provide documentary evidence in support of his assertion.

On exception, the Contractor argued that the ALJ erred in refusing to allow Mr. Mitchell to represent the Contractor because, as president of the respondent LLC, he could have represented the Contractor at the hearing, and the ALJ could have believed Mr. Mitchell's assertion that he was the President of Miracle Contractors, LLC. The Panel finds no error.

First, an ALJ's findings based on the demeanor of a witness is entitled to substantial deference, *Dep't of Health & Mental Hygiene v. Shrieves*, 100 Md. App. 283, 302-03 (1994). Because Mr. Mitchell did not present any other evidence in support of his assertion, the ALJ's decision not to accept his assertion is entitled to deference from the Panel.

Second, the ALJ noted that the Assistant Attorney General who represented the Guaranty Fund at the OAH hearing stated that he spoke with Mr. Mitchell prior to the hearing about his authority to represent the Contractor and that Mr. Mitchell did not identify himself as an officer of the LLC during their conversation. This statement supports the ALJ's decision not to credit Mr. Mitchell's assertion.

Third, the ALJ noted that Mr. Mitchell tried and failed to find documentation of his position with the LLC, which further supports the ALJ's decision not to accept his assertion.

Finally, Mr. Mitchell asserted that the Contractor did not receive notice of the hearing until approximately April 17, 2024—five days before the hearing—because the Contractor had moved in March 2024. However, OAH mailed the hearing notice on February 1, 2024. (OAH Hearing Gund Exhibit 1.) This discrepancy undermines Mr. Mitchell's credibility.

Under these circumstances, the Panel holds that the ALJ correctly declined to allow Mr. Mitchell to represent the Contractor.

The Contractor also argued that the ALJ erred in denying Mr. Mitchell's request to postpone the hearing. Again, the Panel finds no error. Because Mr. Mitchell was not a proper representative of Contractor and not a party to the proceeding, the Panel holds that the ALJ properly denied his request for a postponement.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 10th day of April 2025, **ORDERED:**

- A. That the Findings of Fact of the Administrative Law Judge are **AFFIRMED**;
- B. That the Conclusions of Law of the Administrative Law Judge are **AFFIRMED**;
- C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is **AFFIRMED**;
- D. That the Claimant is awarded \$30,000 from the Maryland Home Improvement Guaranty Fund;
- E. That the Contractor shall remain ineligible for a Maryland Home Improvement Commission license until the Contractor reimburses the Guaranty Fund for all monies disbursed under this Order plus annual interest of at least ten percent (10%) as set by the

Commission, *Md Code Ann.*, Bus. Reg. §§ 8-410(a)(1)(iii), 8-411(a);

- F. That the records and publications of the Maryland Home Improvement Commission shall reflect this decision; and
- G. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

Chandler Loudon

**Chairperson –Panel
Maryland Home Improvement
Commission**