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| IN THE MATTER OF THE CLAIM | * | BEFORE TYRONE CROSBY, |
| OF JULIE WEIS, | * | 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 DANNY AGUILAR | * | |
| VARGAS, | * | OAH No.: LABOR-HIC-02-24-06384 |
| T/A DAV CONSTRUCTION LLC, | * | MHIC No.: 24 (75) 31 |
| RESPONDENT | * | |

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On October 3, 2023, Julie Weis and Joseph Cramer¹ (Claimants) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)² Guaranty Fund (Fund) for reimbursement of \$60,000.00 for actual losses allegedly suffered as a result of a home improvement contract with Danny Aguilar Vargas, trading as DAV Construction (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).³ On March 1, 2024, the

¹ Julie Weis filed the claim on behalf of herself and her spouse, Joseph Cramer.

² The MHIC is under the jurisdiction of the Department of Labor (Department).

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

MHIC issued a Hearing Order on the Claim. On March 1, 2024, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On May 30, 2024, I held a hearing by video. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Catherine Villareale, Assistant Attorney General, Department, represented the Fund. The Claimants were self-represented. The Respondent failed to appear for the hearing.

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. On March 29, 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 May 30, 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 certified mailed Notice was returned to the OAH with the notation "unclaimed." The first-class mailed Notice was not returned. The Respondent did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E. The Notice was mailed to the home and trade address for the Respondent on file with the MHIC. 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 and 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 between DAV Construction, LLC and Julie Weis regarding deck extension
- Clmt. Ex. 2 - Copy of checks from Claimants to Respondent:
- Check dated March 31, 2023 in amount of \$50,000.00.
 - Check dated May 6, 2023 in amount of \$10,000.00.
- Clmt. Ex. 3 - Undated "Punchlist" Letter to Respondent listing issues and concerns with the work performed. The issues and concerns included:
- The deck sways at least 8 inches
 - Depth of cantilever
 - Lack of cross-bracing for deck
 - Straight stairs not attached and not square to deck
 - Bracing for stairs attached to fascia, not wood structure
 - Posts not properly attached to stringers
 - Straight stairs treads and risers not constructed properly
 - The L-shaped stairs not attached to concrete
 - Electrical issues including exposed wires
 - Railings not properly supported
 - Walls to shed not plumb
 - Exposed nails coming out of walls
 - Improper slope for drainpipes
 - Fasteners cut in half or not secure
 - Lack of downspouts or rainwater drainage
- Clmt. Ex. 4 - Document describing code and safety concerns including, but not limited to:
- Support posts installed incorrectly
 - Railings not installed correctly
 - Lack of stringers
 - Respondent's unprofessional response to issues raised
 - Improperly constructed stairs
 - Support beams not properly attached to support posts
 - Roof not sloped towards drains

Clmt. Ex. 5 - Proposed contracts to repair work performed by Respondent:

- Contract from Apex Contracting, LLC signed September 1, 2023
- Proposed Contract from Custom Home Creations, LLC
- Proposed Contract from Sege Construction & Remodeling, LLC

Clmt. Ex. 6 - Letter form Erik Barvir, Owner of Apex Construction and licensed contractor, discussing workmanship of work performed

No documents were submitted on behalf of the Respondent.

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

Fund Ex. 1 – MHIC Claim form, signed September 10, 2023

Fund Ex. 2 – Hearing Order, dated March 1, 2024

Fund Ex. 3 – Notice of Remote Hearing, dated March 29, 2024

Fund Ex. 4 – Licensing History, printed March 28, 2024

Testimony

The Claimants testified. The Respondent did not attend the hearing and the Fund 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 05-137413.

2) On March 31, 2023, the Claimants contracted with the Respondent to demolish and construct a deck. The contract tasks included but were not limited to: partially demolish the existing deck; demolish the existing stairs; construct an extension to the deck; inspect and repair or replace any damaged existing lumber as needed; install two new staircases; build a new shed under new deck; install lights on the stairs; install a new drainage system; and install a new roof membrane.

3) The original agreed-upon contract price was \$83,000.00.

- 4) On April 3, 2023, the Claimants paid the Respondent \$50,000.00. On May 8, 2023, the Claimants paid the Respondent \$10,000.00.
- 5) The Respondent began working on the project in early April 2023.
- 6) The Respondent completed the demolition of the project and constructed the extension of the deck, the shed, the drainage system, electrical system, the two new stairs referred to as "straight stairs" and "L-shaped stairs", respectively.
- 7) The Respondent did not pull any permits for the project.
- 8) The Respondent performed inadequate, incomplete, and unworkmanlike work which included, but not limited to the following:
 - a) failed to properly construct the deck, shed, and both set of stairs;
 - b) failed to construct the "straight" stairs without proper bracing to the deck;
 - c) the stairs were not flush to the deck;
 - d) did not construct stair treads with correct or equal depth;
 - e) posts were not properly installed;
 - f) support beams were not supported by posts;
 - g) the deck and railings were not properly supported which caused the deck and railings to sway significantly;
 - h) improper cantilever length of the deck;
 - i) left nails exposed outside the shed walls;
 - j) installed interior electrical boxes on the exterior of the house.
- 9) Claimants contacted the Respondent by telephone, letter, and in-person meetings to address and correct the issues of the unworkmanlike home improvement and the construction not complying with Maryland and Frederick County codes.
- 10) The Respondent failed to properly correct the numerous issues.

- 11) The Respondent last performed work on the project in May 2023 when the Claimants terminated the contract.
- 12) On June 22, 2023, Custom Home Creations, LLC, a MHIC licensed contractor, provided the Claimant a contract estimating the cost to repair work performed by the Respondent and construct the deck to be \$90,000.00.
- 13) Sege Construction & Remodeling, LLC, a MHIC licensed contractor, estimated the cost to repair work performed by the Respondent and construct the deck to be \$85,000.00.
- 14) On September 1, 2023, Claimant hired Apex Construction, LLC (Apex), a MHIC licensed contractor, to disassemble all work performed by the Respondent and construct the work.
- 15) On May 1, 2024, Erik Barvir, Owner of Apex, wrote the Claimants a detailed letter documenting the work they performed prior to constructing the deck.

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 Claimant has not 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 Claimants’ recovery. 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 or do 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 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 they suffered an actual loss incurred as a result of the Respondent’s acts or omissions, entitling them to compensation from the Fund. The Claimants testified in detail and provided credible evidence that documented the unworkmanlike, inadequate, and incomplete work performed by the Respondent. The Claimants kept noticing various flaws with the Respondent’s work product and would ask the Respondent to repair these various defects.

The Respondent performed unworkmanlike, inadequate, and incomplete home improvements. The Respondent failed to properly construct the deck, shed, and both set of stairs respectively referred to as “straight” and “L-shaped” stairs. The Respondent failed to construct the “straight” stairs without proper bracing to the deck. The stairs were not flush to the deck. The Respondent did not construct stair treads with correct or equal depth. Some posts were not properly installed. Support beams were not supported by posts. The deck and railings were not properly supported which caused the deck and railings to sway significantly. The Respondent

responded to the inquiries regarding the workmanship by making inappropriate comments and did not correct the work.

The Claimants' testimony and evidence is unrefuted and is also persuasive to demonstrate that the Respondent performed an unworkmanlike and inadequate home improvement. Therefore, the Claimants established that they suffered an actual loss as a result of an unworkmanlike and inadequate 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 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 performed some work under the Contract, and the Claimants retained other contractors to 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). Applying this formula, the Claimants paid the Respondent a total of \$60,000.00 under the original contract. *See* Clmt. Ex. 1. This amount is added to the \$93,000.00 the Claimants paid Apex to complete construction. \$60,000.00 added to \$93,000.00

equals \$153,000.00. Subtracting the original contract price of \$83,000.00 from \$153,000.00, equals \$70,000.00. Per this formula, the Claimant's actual loss is \$70,000.00.

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.⁴ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(3)(c). In this case, the Claimant's actual loss of \$70,000.00 exceeds \$30,000.00. Therefore, the Claimant's recovery is limited to \$30,000.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimants have sustained an actual and compensable loss of \$70,000.00 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(4). I further conclude that the Claimants are entitled to recover \$30,000.00 from the Fund.

RECOMMENDED ORDER

I **RECOMMEND** that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimants \$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;⁵ and

⁴ 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").

⁵ 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.

August 27, 2024
Date Decision Issued

TC/at
#212191

Tyrone Crosby

Tyrone Crosby
Administrative Law Judge

PROPOSED ORDER

WHEREFORE, this 27th day of December, 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.

Wm Bruce

Quackenbush

Wm Bruce Quackenbush

Chariman

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***