

IN THE MATTER OF THE CLAIM
OF THOMAS BANNNON,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF TAMARA
ARGUELLO,
T/A JUAN'S FAMILY
CONSTRUCTION, LLC,
RESPONDENT

* BEFORE SUSAN H. ANDERSON,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: LABOR-HIC-02-24-13745
* MHIC No.: 24 (75) 673
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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On January 9, 2024, Thomas Bannon (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$43,450.00 for actual losses allegedly suffered as a result of a home improvement contract with Tamara Arguello, trading as Juan's Family Construction, LLC (Business), (collectively,

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

Respondent).² On May 15, 2024, the MHIC issued a Hearing Order on the Claim. On May 16, 2024, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On October 2, 2024, I held a hearing at the OAH in Hunt Valley, Maryland.³ Catherine Villareale, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself. The Respondent, Tamara Arguello, represented herself.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure.⁴

ISSUES

1. Is the Respondent the responsible party in this case?
2. If so, did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?
3. If so, what is the amount of the compensable loss?

SUMMARY OF THE EVIDENCE

Exhibits

Except as noted, I admitted the following exhibits offered by the Claimant⁵:

- CL Ex. 1 - Narrative attached to the Claim, undated
- CL Ex. 2 - Photographs⁶ of basement, October 2023:
 - 2a. Basement ceiling with ceiling tiles missing; red and blue piping showing
 - 2b. Basement ceiling with ceiling tiles missing showing vent tube protruding below the ceiling tile line
 - 2c. Basement ceiling with ceiling tiles missing

² Md. Code Ann., Bus. Reg. §§ 8-401 to 411 (2015 & Supp. 2024). Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Volume of the Maryland Annotated Code.

³ Bus. Reg. §§ 8-407(a), 8-312.

⁴ 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.

⁵ In keeping with OAH protocol, any exhibits that were not admitted or were pre-marked but not offered will be retained with the file for the purposes of judicial review. COMAR 28.02.01.22C.

⁶ Either the Claimant or his wife took all the photographs offered into evidence in CL Exs. 2 through 12.

- 2d. Not Admitted
 - 2e. Basement ceiling with red piping hanging from ceiling
 - 2f. Extra piping on basement floor
- CL Ex. 3 - Photograph of laundry room with disconnected pipes, October 2023
- CL Ex. 4 - Photograph of master bathroom before construction, May 2023
- CL Ex. 5 - Photographs of the master bathroom during construction, May or June 2023:
- 5a. Bathroom with shower and toilet removed
 - 5b. Shower floor partially installed
 - 5c. Shower floor partially installed
 - 5d. Completed shower floor
 - 5e. Bathroom walls
 - 5f. Shower prior to floor being finished
- CL Ex. 6 - Photographs of master bathroom after construction, October 2023
- 6a. Water leaking next to the shower
 - 6b. Water pooling on step entering shower
 - 6c. Water pooling on step entering shower
 - 6d. Water pooling on step entering shower
 - 6e. Shower with crooked drain, stained floor
 - 6f. Stained shower floor, missing caulk
 - 6g. New floor vent
- CL Exs. 7(a) through (d) - photographs of hall bathroom before construction, May 2023
- CL Ex. 8 - Photographs of hall bathroom during construction, May or June 2023
- 8a. Bathroom totally gutted
 - 8b. New tiles on wall surrounding tub/shower
 - 8c.-d. Bathtub
 - 8e. Shower/tub walls before new tile installed
- CL Ex. 9 - Photographs of hall bathroom after construction, October 2023
- 9a. Vanity under sink with debris
 - 9b. Vanity under sink with debris
 - 9c. New bathtub and shower with faucet off-center
 - 9d. Crooked towel rack
 - 9e. Linen closet, door open
 - 9f. Linen closet, door closed
 - 9g. Wall outside linen closet
 - 9h. Floor inside linen closet
 - 9i. Floor outside linen closet
 - 9j. Uneven flooring (4 photos)
- CL Ex. 10 - Two photographs of kitchen before full remodeling, after installation of recessed lights, May or June 2023

- CL Ex. 11 - Kitchen during construction, May or June 2023
- 11a. New cabinets and flooring installed over old flooring
 - 11b. Cabinets installed over old flooring
 - 11c. Stripped walls
 - 11d. Upper cabinet hung sideways
- CL Ex. 12 - Kitchen after construction, October 2023
- 12a. Shelving installed upside down
 - 12b. Interior of cabinet
 - 12c. Hole in ceiling
 - 12d. Hole in ceiling and position of refrigerator
 - 12e. No backsplash installed between counters and cabinets
 - 12f. Disconnected sink drain
 - 12g. Unfinished counter facing living room and outlet box on floor
 - 12h. No trim on underside of cabinet
 - 12i. Hole in floor where wall had been removed (2 photos)
 - 12j. Lazy Susan cabinet with no doors
 - 12k. No drywall where wall removed
 - 12l. Cabinets crooked and not properly aligned
 - 12m. Crooked cabinet with no crown molding
 - 12n. Unfinished wood next to counter (2 photos)
- CL Ex. 13 - Ledger showing payments to Juan Arguello with the following attachments:
- M&T Bank checking account statement, May 9 – June 8, 2023
 - M&T Bank checking account statement, June 9 – July 7, 2023
 - M&T Bank checking account statement, July 8 – August 8, 2023
 - M&T Bank checking account statement, August 9 – September 8, 2023
 - M&T Bank checking account statement, September 9 – October 6, 2023
 - Withdrawal slips from M&T Bank, May 22, 2023; June 8, 2023; June 20, 2023; June 23, 2023; July 12, 2023; August 4, 2023; September 28, 2023
- CL Ex. 14 - Johns Hopkins Federal Credit Union statement, May 1 – May 31, 2023
- CL Ex. 15 - Screenshots of text messages between the Claimant's wife and Juan Arguello, May 22, 2023
- CL Ex. 16 - Screenshots of text messages between the Claimant's wife and Juan Arguello, July 19, 2023, July 21, 2023
- CL Ex. 17 - Screenshots of text messages between the Claimant's wife and Juan Arguello, August 1 – August 7, 2023
- CL Ex. 18 - Screenshots of text messages between the Claimant's wife and Juan Arguello, August 23, and 29, 2023
- CL Ex. 19 - Home Depot Delivery Invoice, September 29, 2023

- CL Ex. 20 - Proposal from Chesapeake Window & Remodeling, Inc., November 11, 2023
- CL Ex. 21 - Home Inspection Report, September 21, 2024
- CL Ex. 22 - Home Inspection Report, Report Summary, September 21, 2024

I admitted the following exhibits offered by the Respondent:

- Resp. Ex. 1 - Letter from the Respondent to the MHIC, March 3, 2023, received by MHIC March 6, 2023
- Resp. Ex. 2 - Respondent's Out of Business email message, May 2, 2023 with attached records showing Out of Business messages sent between March 15, 2023 and July 17, 2023
- Resp. Ex. 3 - Maryland Judiciary Case Search, Case Information, Circuit Court for Harford County – Family, Case No. C-12-FM-22-001833, filing date December 14, 2022
- Resp. Ex. 4 - Subcontractor Agreement between the Respondent and Kingdom Finishes/Caleb Dye, January 20, 2023
- Resp. Ex. 5 - Pages 1-9 from the Contractor's Guide, undated
- Resp. Ex. 6 - Sample Construction Contract of Respondent, undated
- Resp. Ex. 7 - Department of Assessments and Taxation Articles of Amendment for Juan's Family Construction, LLC, March 18, 2021; Department of Assessments and Taxation Articles of Organization for Juan's Family Construction, LLC, August 7, 2015; Department of Assessments and Taxation Articles of Amendment for a Limited Liability Company, December 12, 2016
- Resp. Ex. 8 - Bank of America checking account statements for Juan's Family Construction, LLC, January through March 2023
- Resp. Ex. 9 - 2023 Tax return for Juan's Family Construction, LLC, undated
- Resp. Ex. 10 - 2023 Tax return for Tamara Arguello, undated

I admitted the following exhibits offered by the Fund:

- GF Ex. 1 - Notice of Hearing, June 17, 2024
- GF Ex. 2 - Hearing Order, May 15, 2024
- GF Ex. 3 - Home Improvement Claim Form, received January 9, 2024
- GF Ex. 4 - Letter from the MHIC to the Respondent, February 12, 2024

- GF Ex. 5 - Respondent's licensing history, September 18, 2024
- GF Ex. 6 - Respondent's business details from the BBB⁷ website, undated; Tamara Arguello's profile on Realtor.com, undated
- GF Ex. 7 - MHIC internal contact notes, December 12, 2023, through August 6, 2024, printed August 6, 2024

Testimony

The Claimant testified and presented the testimony of Scott Appel, the MHIC investigator assigned to the case.

The Respondent testified and did not present other witnesses.

The Fund presented no 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 01-112822 for Tamara Arguello and 05-134154 for the Business.⁸

2. On August 7, 2015, Mr. Arguello filed Articles of Organization (Articles) with the State of Maryland Department of Assessments and Taxation (SDAT). The Articles created the Business, Juan's Family Construction, LLC, a limited liability company, and listed Juan Arguello as the "authorized person" and resident agent.⁹

⁷ Better Business Bureau.

⁸ GF Ex. 5. A corporation may not act as a home improvement contractor unless it obtains a corporate home improvement contractor's license, and to obtain and maintain a corporate home improvement license, the corporation shall employ one individual licensed contractor who shall be in responsible charge of the corporation's home improvement work. COMAR 09.08.01.04A, B. The corporation and the individual in responsible charge of the corporation's home improvement work are jointly and severally responsible for any payments made to claimants from the Fund for violations by the corporation or individual in responsible charge. COMAR 09.08.01.04C(3).

⁹ Resp. Ex. 7.

3. On December 12, 2016, Juan's Family Construction, LLC filed, with the SDAT, Articles of Amendment adding Tamara Arguello as a member/partner of the Business and naming her resident agent.¹⁰

4. On March 18, 2021, Juan's Family Construction, LLC filed, with the SDAT, Articles of Amendment changing the sole member of the LLC to Tamara Arguello and indicating that Mr. Arguello no longer possessed any ownership interest in the Business nor had any authority to act as a member of the LLC.¹¹ Mr. Arguello was still actively involved in the Business as an employee of the Business and worked under the Business' MHIC license.¹²

5. In December 2022, Ms. Arguello filed for divorce from Mr. Arguello.¹³ At first, the couple tried to continue to run the Business together. In or about March 2023, they decided to close the Business.

6. Juan's Family Construction, LLC went out of business in March 2023. Ms. Arguello created an automatic response to any emails to the Business that stated that it was no longer in business.¹⁴

7. Ms. Arguello did not revoke the charter for Juan's Family Construction, LLC by filing Articles of Cancellation with the SDAT.

8. Ms. Arguello did not change the Business's listing on the BBB website that listed Mr. Arguello as the owner and principal of the company.¹⁵

9. Ms. Arguello did not take down or change the profile Ms. Arguello had posted on Realtor.com stating that she was a co-owner of the Business.¹⁶

¹⁰ Resp. Ex. 7.

¹¹ Resp. Ex. 7.

¹² It is unclear from the record whether Mr. Arguello had a salesman license issued by the MHIC.

¹³ Resp. Ex. 3.

¹⁴ Resp. Ex. 2.

¹⁵ GF Ex. 6.

¹⁶ GF Ex. 6.

10. On March 3, 2023, the Ms. Arguello sent a letter to the MHIC asking it to “place [her] license on inactive status, please” and indicating that Juan’s Family Construction was no longer in business.¹⁷

11. The MHIC sent the letter back and indicated that Ms. Arguello needed to pay a fee to place the MHIC licenses on inactive status.

12. Ms. Arguello wrote a check and sent it to the MHIC. The MHIC never received the check and both Ms. Arguello’s and the Business’ licenses remained active. Ms. Arguello did not follow up with the MHIC to confirm that it had deactivated the licenses.

13. In May 2023, the Claimant decided to update his kitchen, his master bathroom, a hallway bathroom, and replace and update plumbing in the basement. His sister-in-law, who works at Home Depot, gave him the name of a few contractors to contact.

14. Mr. Arguello was the only person who responded to the Claimant’s inquiries. Mr. Arguello indicated that he worked for Juan’s Family Construction, LLC, and that the Business was licensed by the MHIC. The Claimant checked the MHIC’s website and saw that the Business was licensed.

15. In late May 2023, the Claimant entered into an oral contract for Mr. Arguello to replace and update plumbing in the basement and completely renovate the master bathroom, hallway bathroom, and kitchen. Mr. Arguello quoted the Claimant a price of \$47,000.00 but indicated that it could be slightly higher depending on the prices of appliances and materials.

16. The Claimant believed he was entering into a contract with the Business.

17. Mr. Arguello asked the Claimant to pay him in cash. He told the Claimant that he was going through a divorce, and it was easier to keep his money separate from his wife’s if the Claimant paid in cash.

¹⁷ Resp. Ex. 1.

18. Between May 23, 2023, and August 11, 2023, the Claimant paid Mr. Arguello \$38,000.00 in cash as follows¹⁸:

- a. May 23, 2023 - \$3,000.00
- b. June 9, 2023 - \$5,000.00
- c. June 23, 2023 - \$15,000.00
- d. July 12, 2023 - \$5,000.00
- e. August 11, 2023 - \$10,000.00
- f. September 29, 2023 - \$10,000.00

19. Mr. Arguello worked at the Claimant's home sporadically for approximately five months. Sometimes he went long stretches without appearing for work.

20. As the project went on, the Claimant noted concerns about the work that Mr. Arguello had done. In the master bathroom, water pooled on shower floor, the shower floor was discolored, and water leaked outside of the shower at a corner wall. In the hallway bathroom, the faucet was not centered over the bathtub, the towel rack was crooked, the flooring was installed unevenly, and the linen closet was not completely remodeled as the two had discussed. In the kitchen, Mr. Arguello installed new flooring and new cabinetry on top of old flooring, hung an upper cabinet sideways, hung two sets of shelving upside down, stripped the walls but did not install a new backsplash, never re-connected the kitchen drain, did not finish the back of the counter that faces the living room, did not install trim on the underside of one of the cabinets, hung some cabinets crookedly and did not install crown molding, did not finish all the area around the counter, left a hole in the floor from where he had removed a wall, and at least one cabinet was missing a door. The plex tube plumbing Mr. Arguello installed in the basement was incomplete and he did not replace some ceiling tiles.

21. In September 2023, the Claimant and Mr. Arguello had a disagreement about money. Mr. Arguello claimed that the Claimant had not given him money for appliances when

¹⁸ CL Ex. 13.

the Claimant had done so. On September 24, 2023, the Claimant and Mr. Arguello had a lengthy telephone conversation wherein Mr. Arguello told the Claimant that he could finish all the work for an additional \$15,000.00, over the \$38,000.00 the Claimant had already paid, for a total contract price of \$53,000.00. The Claimant paid Mr. Arguello \$10,000.00 in cash that week¹⁹ and advised that he would pay the remaining \$5,000.00 when the work was completed.

22. On October 3, 2023, kitchen appliances (stove, dishwasher, and microwave) from Home Depot were delivered to the Claimant's home; the invoice showed that Mr. Arguello had purchased them on September 29, 2023, for \$3,364.44.²⁰

23. Mr. Arguello last performed work at the Claimant's house on or about October 9, 2023. On October 20, 2023, the Claimant went to Mr. Arguello's apartment and advised that he was ending the job because the work was incomplete, the workmanship was faulty, and Mr. Arguello demonstrated an apparent unwillingness to complete the job as he had simply stopped showing up for work.

24. The Claimant paid Mr. Arguello a total of \$48,000.00.

25. On November 11, 2023, the Claimant obtained an estimate in the amount of \$43,450.00 from Chesapeake Window and Remodeling, a contractor licensed by the MHIC, to correct and complete the work that Mr. Arguello performed.

26. Ms. Arguello was unaware that Mr. Arguello was doing work under the auspices of Juan's Family Construction, LLC until the Claimant filed a complaint in November 2023.

27. On February 14, 2024, Ms. Arguello inactivated both her individual license and the Business' license with the MHIC.²¹

¹⁹ CL Ex. 13.

²⁰ CL Ex. 19.

²¹ GF Ex. 5.

DISCUSSION

THE BURDEN OF PROOF

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence.²² 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.²³

In response, Ms. Arguello has asserted that she should not be responsible for any loss the Claimant suffered because her ex-husband acted without her knowledge or permission and neither she nor the Business entered into a contract with the Claimant. Ms. Arguello, therefore, bears the burden to show by a preponderance of the evidence that she should not be held responsible, even if the Claimant suffered an actual loss as a result of work performed by Mr. Arguello.²⁴

THE LEGAL STANDARD

An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor.”²⁵ “[A]ctual loss’ means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.”²⁶ For the following reasons, I find that the Claimant has proven eligibility for compensation.

THE POSITIONS OF THE PARTIES

The Claimant asserted that Mr. Arguello represented to him that he was an owner of the Business and that the Business was properly licensed by the MHIC. The Claimant argued that he had no reason to disbelieve Mr. Arguello, because when the Claimant checked the MHIC’s

²² Bus. Reg. § 8-407(e)(1); State Gov’t § 10-217 (2021); COMAR 09.08.03.03A(3).

²³ *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002).

²⁴ COMAR 28.02.01.21K(1), (2)(b).

²⁵ 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.”).

²⁶ Bus. Reg. § 8-401.

website, it reflected that the Business had an active license. He further contended that he has suffered a very large actual loss as the result of Mr. Arguello's actions, because Mr. Arguello did not complete the agreed-upon work and the work that he did complete was inadequate and unworkmanlike. The Claimant urged me to find that he had suffered an actual loss and to grant him an award from the Fund.

Ms. Arguello expressed sympathy for the Claimant and did not dispute that the work Mr. Arguello performed was unworkmanlike and inadequate. However, she contended that the Business went out of business in March 2023, that she tried to deactivate her MHIC licenses at that time, that the outgoing email for the Business advised that Juan's Family Construction, LLC was out of business, and that she had no knowledge that Mr. Arguello was representing to anyone that he still worked for the Business. Ms. Arguello asserted that it would be unfair to hold her accountable for the actions and misdeeds of her former husband, of which she had no knowledge. Ms. Arguello also maintained that the agreement between the Claimant and Mr. Arguello was not a valid contract because it was not in writing, and all home improvement contracts must be in writing.

There are No Statutory Bars to Recovery

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.²⁷ The Claimant resides in the home that is the subject of the Claim.²⁸ The parties did not enter into a valid agreement to submit their disputes to

²⁷ Bus. Reg §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2024).

²⁸ *Id.* § 8-405(f)(2) (Supp. 2024).

arbitration.²⁹ 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.³⁰

The Oral Contract Is Not Invalid

Ms. Arguello argued that the contract between the Claimant and Mr. Arguello is invalid because the statute requires that “[e]ach home improvement contract shall . . . be in writing and legible.”³¹ However, the Fund asserted, and I agree, that the mere fact that the contract was oral does not render it invalid. Section 8-501(a) of the Business Regulation Article specifically provides that “[a] home improvement contract that does not comply with this section is not invalid merely because of noncompliance.” Therefore, I find no merit to Ms. Arguello’s argument to the contrary and the fact that the contract was oral rather than written is not a bar to recovery.

The Claimant Suffered An Actual Loss

The evidence unequivocally shows that Mr. Arguello performed an inadequate, unworkmanlike, and incomplete home improvement for the Claimant. The Claimant presented extensive documentation, including photographs, a detailed home inspection report, and an estimate from a licensed contractor reflecting the work that needed to be repaired and completed.³² Essentially, the evidence shows that none of Mr. Arguello’s work can be salvaged. The only benefit the Claimant received from his association with Mr. Arguello are the appliances that he paid for and which were delivered to his home.

The Respondent May Be Held Responsible for the Claimant’s Actual Loss

Ms. Arguello disputes that she is or should be liable for the actions of Mr. Arguello as she did not enter into any contract with the Claimant, she did not know that Mr. Arguello was

²⁹ *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2024).

³⁰ *Id.* § 8-405(f)(1) (Supp. 2024).

³¹ *Id.* § 8-501(b)(1).

³² CL Exs. 2-12, 20-22.

purporting to act under the Business' MHIC license, and she took appropriate steps to close the Business in March 2023. These arguments are not convincing.

The evidence shows that Mr. Arguello acted with apparent authority with respect to the Claimant, causing the Claimant to believe he had contracted with Juan's Family Construction, LLC, through its namesake, Juan Arguello. Under the equitable doctrine of apparent authority, "the principal becomes responsible for the agent's actions when the principal's conduct, either affirmative acts or the failure to take corrective steps, has clothed an agent with apparent authority and thereby induces a third party to rely to his detriment."³³ Reasonable reliance by the third party is a critical element of this doctrine.³⁴

Apparent authority is created by acts or conduct of the principal which, reasonably interpreted, causes the third person to rely in good faith on the assumption that an agent has the principal's authority to act.³⁵ "When a third party has ascertained the apparent authority with which the principal has clothed the agent, he is under no further obligation to inquire into the agent's actual authority."³⁶ Where apparent authority exists, the principal is bound even if his or her agent "has, in the particular instance, exceeded or violated his instructions, and acted without authority."³⁷

In this case, the Claimant interacted with Juan of Juan's Family Construction, LLC, and then checked the MHIC's website and saw that the Business bearing Juan's name had a valid MHIC license. Ms. Arguello asserted that she sent the MHIC a letter asking that her licenses be placed on inactive status; however, that did not occur. Ms. Arguello contended that she sent the

³³ *Progressive Cas. Ins. Co. v. Ehrhardt*, 69 Md. App. 431, 441 (1986).

³⁴ *See id.* at 441; *Miller v. Mueller*, 28 Md. App. 141, 148 (1975) ("The action or manifestation of authority giving rise to the reliance must be that of the principal, and the reliance by the third person on the action or manifestation of authority must be reasonable.").

³⁵ *McClure v. E.A. Blackshear Co.*, 231 F. Supp. 678 (D. Md. 1964).

³⁶ *McClure* at 685, citing *Brager v. Levy*, 122 Md. 554 (1914).

³⁷ *Parker v. Junior Press Printing Service, Inc.*, 266 Md. 721, 728 (1972) citing *Wailes & Edwards, Inc. v. Bock*, 265 Md. 274 (1972).

MHIC the required fee and believed the licenses had been placed on inactive status. That is not compelling. Clearly the MHIC never received any check from Ms. Arguello; Ms. Arguello did not follow up when the check was not cashed to determine why the check was not cashed or the status of the MHIC licenses. Absent the check being cashed and her receiving something from the MHIC confirming that the licenses had been placed on inactive status, it was not reasonable for Ms. Arguello to believe that the licenses were no longer active.

In addition, the Claimant was dealing with Juan Arguello, the “Juan” of Juan’s Family Construction, LLC. The charter for the Business had not been revoked and a search of the Better Business Bureau website showed an active company and listed Juan Arguello as the principal and owner. In failing to revoke the charter of the Business, to ensure that the Business’ MHIC license was placed on inactive status, and not updating information with the Better Business Bureau, the Respondent lent Juan Arguello apparent authority to act for the Business. The Claimant, who exercised due diligence in researching the company to ensure it was licensed by the MHIC, reasonably believed that Mr. Arguello had the authority to act on behalf of the Business.³⁸

It is well settled that the Maryland Home Improvement Law “is a regulatory statute enacted for the protection of the public.”³⁹ The Fund was created “to provide an additional

³⁸ See, e.g., *Brager v. Levy*, 122 Md. 554 (1914):

[W]hen a third person has ascertained the apparent authority with which the principal has clothed the agent, he is under no further obligation to inquire into the agent’s actual authority. The authority must, however, have been actually apparent to the third person who, in order to avail himself of his rights thereunder, must have dealt with the agent in reliance thereon, in good faith, and in the exercise of reasonable prudence, in which case the principal will be bound by the acts of the agent performed in the usual and customary mode of doing such business, although he may have acted in violation of private instructions, for such acts are within the apparent scope of his authority. . . . The liability of the principal is determined in any particular case, however, not merely by what was the apparent authority of the agent, but by what authority the third person, exercising reasonable care and prudence, was justified in believing that the principal had under the circumstances conferred upon his agent.

³⁹ *Brzowski v. Md. Home Improvement Comm’n*, 114 Md. App. 615, 628 (1997) (citing *Harry Berenter, Inc. v. Berman*, 258 Md. 290, 294 (1970)).

remedy for homeowners who suffered an actual loss due to unsatisfactory work performed by a home improvement contractor.”⁴⁰ As the individual licensed contractor in responsible charge of the Business’s home improvement work,⁴¹ Ms. Arguello is responsible for the Business and a responsible party in a case brought against the Fund, a remedial statutory creation for the benefit of wronged consumers. If Ms. Arguello believes that Mr. Arguello fraudulently used her or the Business’s MHIC license number, she can seek alternative legal recourse. However, given the remedial nature of this statutory scheme, the preponderance of the evidence establishes that Mr. Arguello acted with the apparent authority that Ms. Arguello provided to him through the Business, Juan’s Family Construction, LLC. The Business and Ms. Arguello are collectively the proper Respondent in this case, as Ms. Arguello and the Business are jointly and severally responsible.⁴² Accordingly, Ms. Arguello has failed to meet her burden of demonstrating that she should not be liable for the Claimant’s actual loss in this case.

The Amount of the Claimant’s Actual Loss

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.⁴³ The MHIC’s regulations provide three formulas to measure a claimant’s actual loss, depending on the status of the contract work.

The Business, through Mr. Arguello as its agent with apparent authority, 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:

⁴⁰ *Brzowski*, 114 Md.App. at 628.

⁴¹ COMAR 09.08.01.04(B).

⁴² COMAR 09.08.01.04(C).

⁴³ Bus. Reg. § 8-405(e)(3) (Supp. 2024); COMAR 09.08.03.03B(1).

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.⁴⁴

Therefore, the Claimant's losses are calculated as follows:

| | |
|----------------------------------|--------------|
| Amount paid to Mr. Arguello | \$48,000.00 |
| Amount to Repair/Complete Work | +\$43,450.00 |
| Subtotal | \$91,450.00 |
| Less Amount of Original Contract | -\$48,000.00 |
| Actual Loss | \$43,450.00 |

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.^{45, 46} In this case, the Claimant's actual loss of \$43,450.00 exceeds \$30,000.00. Therefore, the Claimant's recovery is limited to \$30,000.00.

PROPOSED CONCLUSIONS OF LAW

I conclude as a matter of law that Tamara Arguello and the Business are collectively the proper Respondent in this case.⁴⁷ I further conclude that the Claimant has sustained an actual and compensable loss of \$43,450.00 as a result of the Respondent's acts or omissions.⁴⁸ I further conclude that the Claimant is entitled to recover \$30,000.00 from the Fund.

⁴⁴ COMAR 09.08.03.03B(3)(c).

⁴⁵ 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").

⁴⁶ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2024); COMAR 09.08.03.03B(4).

⁴⁷ *Progressive Cas. Ins. Co. v. Ehrhardt*, 69 Md. App. 431 (1986); *McClure v. E.A. Blackshear Co.*, 231 F. Supp. 678, 685 (D.Md.1964); *Parker v. Junior Press Printing Service, Inc.*, 266 Md. 721 (1972).

⁴⁸ Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2024); COMAR 09.08.03.03B(3)(c).

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;⁴⁹ and

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

November 20, 2024
Date Decision Issued

Susan H. Anderson

Susan H. Anderson
Administrative Law Judge

SHA/kh
#214319

⁴⁹ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); 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**

**IN THE MATTER OF THE CLAIM OF
THOMAS BANNON
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ACTS OR OMISSIONS OF
TAMARA ARGUELLO AND JUAN'S
FAMILY CONSTRUCTION, LLC**

*** MARYLAND HOME
* IMPROVEMENT COMMISSION
*
* MHIC CASE NO. 24(75)673
* OAH CASE NO. LABOR-HIC-
* 02-24-13745
*
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FINAL ORDER

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on October 2, 2024. Following the evidentiary hearing, the ALJ issued a Proposed Decision concluding that the homeowner, Thomas Bannon (“Claimant”) suffered an actual loss as a result of the acts or omissions of Tamara Arguello and Juan’s Family Construction, LLC (collectively, “Contractor”). *ALJ Proposed Decision* p. 17. 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 June 5, 2025, a three-member panel (“Panel”) of the MHIC held a remote hearing on the exceptions filed in this matter. The Claimant and Contractor 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 OAH hearing. The Contractor sought leave to present new evidence but failed to demonstrate that the evidence she sought to present could not have been discovered before the evidentiary 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 renovation of two bathrooms and the kitchen at the Claimant's home. The ALJ found that the Claimant entered an oral contract with Ms. Arguello's estranged husband, Juan Arguello, in May 2023, that Mr. Arguello represented to the Claimant that he worked for Juan's Family Construction, LLC ("JFC"), that JFC was licensed by MHIC, and that the Claimant confirmed that JFC was licensed on MHIC's website. The ALJ found that Mr. Arguello's actions with respect to the Claimant were undertaken with the apparent authority of JFC. *ALJ's Proposed Decision* pp. 14-16. The ALJ found that the Contractor's performance under the contract was inadequate, unworkmanlike, and incomplete. *ALJ's Proposed Decision* p. 13.

On exception, the Ms. Arguello argued that the ALJ erred in holding her and JFC liable for the Claimant's loss because her estranged husband was operating the business without authority and she was unaware of the Claimant's contract until he filed a complaint with the Commission. Specifically, she argued that she could not be held liable for the Claimant's loss under Md. Code Ann. Bus. Reg. ("BR") § 8-411(b) because (1) she did not know of Mr. Arguello's conduct with respect to the Claimant and (2) she could not prevent Mr. Arguello's misconduct. The Panel finds no error.

First, BR § 8-411(b) does not preclude the Commission from holding a contractor liable for a claimant's actual loss when the contractor did not know of the misconduct causing the loss and could not prevent the misconduct. Rather, it precludes the Commission from *suspending a contractor's license* in such circumstances. Therefore, even if the Contractor did not know of Mr. Arguello's misconduct and could not have prevented it, the Commission can hold the Contractor liable for Mr. Arguello's actions undertaken with the apparent authority of JFC.

Second, the Panel finds that the Contractor could have prevented Mr. Arguello's conduct but failed to do so. In May 2023, Juan Arguello advised the Claimant that he worked for JFC and that JFC held an MHIC license. The Claimant then checked the Commission's website and confirmed that JFC was licensed. The Panel finds that Ms. Arguello could have prevented Mr. Arguello from acting with the apparent authority of JFC by having MHIC place JFC's contractor license on inactive status before the Claimant confirmed that JFC was licensed in May 2023. Ms. Arguello was the licensed individual contractor in responsible charge of JFC's home improvement work and was the sole member of JFC at all times relevant to this proceeding. Although, in March 2023, she decided to close JFC and asked MHIC to place her license on inactive status, she did not pay the fee necessary to do so. She then purportedly sent a check to MHIC, but MHIC did not receive the check, and she did not contact MHIC to confirm that the license had been placed on inactive status.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 9th day of June 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 \$30,000.00 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.

Robert Altieri
**Chairperson –Panel
Maryland Home Improvement
Commission**