IN THE MATTER OF THE CLAIM	*	**BEFORE WILLIAM F. BURNHAM,**
OF EZRA LULANDALA,[1]	*	**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 KARIM HARRIED	*	
T/A KDRB CONSTRUCTION, LLC,	*	**OAH No.: LABOR-HIC-02-21-27307**
RESPONDENT	*	**MHIC No.: 19 (75) 1196**

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PROPOSED DECISION

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STATEMENT OF THE CASE

On February 25, 2020, Ezra Lulandala (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Maryland Department of Labor (Department),[2] for reimbursement of $30,118.00 for alleged actual losses suffered as a result of a home improvement contract with Karim Harried t/a KDRB Construction LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).[3] On November 17, 2021, the MHIC issued a Hearing Order on

[1] The Home Improvement Claim Form listed the Claimant as "Chase Street Partners LLC / Ezra Lulandala."
[2] On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.
[3] Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

the claim. On November 18, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On December 3, 2021, the OAH provided a Notice of Hearing (Notice) to the parties by United States mail delivery[4] to the parties' addresses on record with the OAH. Code of Maryland Regulations (COMAR) 09.08.03.03A(2); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for January 24, 2022, at 9:30 a.m., at the OAH in Hunt Valley. The Notice further advised the parties that failure to attend the hearing might result in "a decision against you."

The United States Postal Service returned the Claimant's First Class mail P.O. Box Notice to the OAH on December 23, 2021. The United States Postal Service returned the Respondent's certified mail Notice on December 27, 2021, and the Claimant's P.O. Box Certified mail Notice on February 24, 2022. On January 24, 2022, I conducted the hearing at the OAH in Hunt Valley. Code of Maryland Regulations (COMAR) 28.02.01.20; Md. Code Ann., Bus. Reg. § 8-407(e). Catherine H. Bellinger, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself. Neither the Respondent nor anyone authorized to represent the Respondent attended the hearing, and, after waiting more than fifteen minutes for the Respondent to appear, I proceeded with the hearing in his absence. COMAR 28.02.01.23A.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 09.01.03; COMAR 28.02.01.

[4] First Class and Certified Mail. The Claimant's Notice went to a street address and to a P.O. Box address.

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 on the Claimant's behalf:

CL. Ex. 1 KDRB Construction Contract, March 27, 2017

CL. Ex. 2 DSP Contractors LLC Contract, November 10, 2017

CL. Ex. 3 Certificate of Payment/Disbursement Request Commercial and Multi-Family Loan Program, October 6, 2017; Change Order Request Form, September 5, 2017; Construction Progress and Inspection Report, October 6, 2017.

CL. Ex. 4 Baltimore Community Lending, Check Requisition for (Commercial Loan), December 8, 2017, Subcontractor's Partial Release and Waiver of Liens, November 15, 2017, November 28, 2017; receipts, various dates; Invoice #1300, November 17, 2017; Sales Order, November 28, 2017; Capital Tristate Ship Ticket, November 27, 2017; Ferguson Enterprises, Inc. Cash Sale Order, November 9, 2017; Construction Progress and Inspection Report and photographs, December 8, 2017;

CL. Ex. 5 Emails from the Claimant to the Respondent, various dates

CL. Ex. 6 Baltimore City Department of Housing & Community Development, Search Results, various dates 2014 to 2018

CL. Ex. 7 Department licenses for the Respondent, expiration October 12, 2018.

The Respondent did not offer any exhibits into evidence.

I admitted the following exhibits on the Fund's behalf:

MHIC Ex. 1 Notice of remote hearing, December 3, 2021; Hearing Order, November 17, 2021

MHIC Ex. 2 Department Licensure history for the Respondent, December 10, 2021

MHIC Ex. 3 Letter from J. Tunney to the Respondent, March 3, 2020; HIC Claim Form, February 25, 2020

MHIC Ex. 4 Department Results for Active Licensed Home Improvement, DSP Contractors LLC, expiration November 25, 2025

Testimony

The Claimant testified.

The Respondent did not appear.

The Fund did not present the testimony of 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 01*86494.

2. At all relevant times, the Claimant/Chase Street Partners LLC (Chase Street) owned a home located in Baltimore, Maryland (Property).

3. At all relevant times the Claimant was a member of Chase Street. Chase Street is no longer a business entity.[5]

4. The Claimant never lived at the Property. The Claimant does not own more than three properties in Maryland.

5. On March 27, 2017, the Claimant and the Respondent entered into a contract (Contract) for demolition and rebuild of the Property.

6. The Contract included, among other things, demolition of the interior structure, installation of new framing, drywall, electrical systems, painting, fixtures, windows, doors, outside patio, and railings.

[5] For ease of reference, I will refer to the Claimant and Chase Street separately, or collectively as the Claimant where appropriate in the decision.

7. The Contract included all material and labor not otherwise specified. The Contract called for the Respondent to complete all work according to local codes, remove all debris, and provide standard builder grade materials, fixtures and/or appliances.

8. The Contract indicated that the work would be completed within 150 days of the date of the building permit, and the Respondent would obtain a certificate of occupancy.

9. The total Contract price was $170,000.00 to be paid over six draws.

10. An additional change order to "repair first floor rear stucco" increased the Contract by $1,200.00. (CL. Ex. 3)

11. The Contract was financed through Baltimore Community Lending (BCL). BCL was a program to refurbish Baltimore City homes through tax incentives.

12. BCL retained ten percent of all payments to contractors until a certificate of occupancy was obtained.

13. On or about June 26, 2017, the Respondent began work.

14. On or about July 13, 2017, the Respondent obtained a building permit and that permit expired October 13, 2017.

15. The Claimant paid the Respondent a total of $148,900.00 for work performed under the Contract. BCL retained $14,890.00.

16. The Respondent stopped working at the Property in September 2017.

17. Chase Street emailed[6] the Respondent in October 2017 and indicated that the Respondent was not returning multiple attempts to communicate with Chase Street's "team." (*See* CL. Ex. 5).

18. The Claimant unsuccessfully tried to contact the Respondent through the Respondent's subcontractors.

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[6] The emails are from Alex Aaron, identified as Chase Street's "Chairman & CEO." (*See* CL. Ex. 5).

19. Chase Street emailed the Respondent on October 25, 2017 and explained that because the Respondent failed to respond to telephone calls and emails, the Respondent had five business days to complete work on the Property or the Claimant would proceed with another contractor.

20. The Respondent never responded to the Claimant's attempts to contact him.

21. On November 9, 2017, the Claimant entered into a contract with DSP Contractors LLC (DSP Contract) to complete work at the Property.

22. Among the scope of work in the DSP Contract were the following:

- Two weeks of labor for mason repair, basement mold removal, trash removal, and stairs installation
- Materials for doors, glass, drywall, hardware, tile, interior/exterior paint, shoe molding, wood
- Bath tub, pedestal sink, mirrors, windows, doors, back splash shelving, and gutters
- Two trash roll off containers
- Custom built stairs
- Installation of two furnaces, two compressors, and final tie-ins
- Electrical finishings and trims
- Plumbing finishing, water heater, faucets, toilets, all sink fixtures, sewage, gas lines to new meter

23. DSP obtained a new permit on November 9, 2017.

24. The Respondent's HVAC, tile work and masonry work had to be corrected by DSP. Windows that the Respondent installed had to be removed and reinstalled to close gaps. DSP repaired floor damage left by the Respondent.

25. The scope of DSP's work was entirely within the scope of the Contract with the Respondent. The Respondent under bid the cost of performing the scope of work in the Contract.

26. The Claimant purchased materials for the DSP Contract in the amount of $11,318.00. The DSP Contract totaled $41,100.00 that included a change order.

27. BCL paid $52,418.00 for the DSP Contract.

28. On December 8, 2017, a certificate of occupancy for the Property was obtained.

DISCUSSION

Legal Framework

The Maryland General Assembly created the Fund to provide an available pool of money from which homeowners could seek relief for losses sustained at the hands of incompetent or unscrupulous home improvement contractors. Md. Code Ann., Bus. Reg. §§ 8-401 to 8-411. A homeowner is authorized to "recover compensation from the Fund for an actual loss that results from an act or omission by a licensed contractor . . . ." Md. Code Ann., Bus. Reg. § 8-405(a); *see also* COMAR 09.08.03.03B(2). The statutes governing the Fund define "actual loss" as "the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Md. Code Ann., Bus. Reg. § 8-401. "'Owner' includes a homeowner, tenant, or other person[7] who buys, contracts for, orders, or is entitled to a home improvement." Md. Code Ann., Bus. Reg. § 8-101.

At a hearing on the claim, the claimant has the burden of proving the validity of the claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2014); COMAR 09.08.03.03A(3). "[A] preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces . . . a belief that it is more likely true than not true." *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002) (quoting *Maryland Pattern Jury Instructions* 1:7 (3d ed. 2000)).

[7] "'Person' means an individual, receiver, trustee, guardian, personal representative, fiduciary, representative of any kind, partnership, firm, association, corporation, or other entity." Md. Code Ann., Bus. Reg. § 1-101.

For the reasons explained below, I find that the Claimant has proven eligibility for compensation from the Fund.

Statutory Eligibility

The evidence in this case establishes there are no impediments barring the Claimant[8] from recovering from the Fund. The home improvement work was performed on the Claimant's Property in Maryland and the Claimant does not own more than three properties. The Claimant is not a relative, employee, officer, or partner of the Respondent; the Claimant is not related to any of the Respondent's employees, officers, or partners. The Claimant did not reject any efforts by the Respondent to resolve the claim. The Contract between the Claimant and the Respondent does not contain an arbitration provision. The Claimant timely filed the Claim with the MHIC on February 25, 2020. Finally, the Claimant has not taken any other legal action to recover monies. Md. Code Ann., Bus. Reg. §§ 8-101(g)(3)(i), 8-405(c), (d), (f), and (g), 8-408(b)(1) (2015 & Supp. 2021).

The Respondent Performed an Inadequate and Unworkmanlike Home Improvement

The Respondent performed an inadequate and unworkmanlike home improvement. The record demonstrates that the Respondent failed to properly install windows, masonry, and tiling, and he left scratches on the floor. Some of his work had to be torn out and redone. DSP identified several areas where the work was incomplete, and materials were not purchased. (*See* CL. Ex. 2.) The Claimant had to purchase materials for DSP to complete the Respondent's work. (*See* CL. Ex. 4.) The Respondent abandoned the project and thereafter refused to communicate with the Claimant. Accordingly, I find the Respondent performed an inadequate and unworkmanlike home improvement. Additionally, the Respondent abandoned the home improvement he contracted to complete. Therefore, the Claimant suffered an "actual loss" and is entitled to "the costs of

[8] The Fund did not object to the Claimant proceeding in his personal capacity.

restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Md. Code Ann., Bus. Reg. § 8-401. The Claimant hired another contractor to complete the Contract. DSP completed the scope of the work in the Contract, repaired unworkmanlike construction and obtained a certificate of occupancy.

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. Md. Code Ann., Bus. Reg. § 8-405(e)(3); 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 Amount of the Claimant's Actual Loss

As discussed above, the Respondent performed an inadequate and unworkmanlike home improvement and the Claimant hired another contractor to complete the project. 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). Additionally, the Commission may not award from the Fund an amount in excess of the amount paid by or on behalf of the claimant to the contractor against whom the claim is filed." COMAR 09.08.03.03B(3)(c) and (4). The Claimant paid the Respondent $134,010.00 pursuant to the Contract. (*See* CL. Ex. 3). The Claimant paid $52,418.00 to complete the Contract correctly.

Using the COMAR 09.08.03.03B(3)(c) formula, I calculate the Claimant's actual monetary loss as follows:

Amount paid to the Respondent	$ 134,010.00
+ Amount paid to correct or complete the work	$ 52,418.00
	$ 186,428.00
- Amount of original contract	$ 171,200.00
Amount of actual loss	**$ 15,228.00**

"The Commission may not award from the Fund an amount in excess of the amount paid by or on behalf of the claimant to the contractor against whom the claim is filed." COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss is less than he paid to the Respondent. Therefore, the Claimant is entitled to recover his actual loss of $15,228.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $15,228.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2021); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover that amount from the Fund.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $15,228.00; 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

[9] *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.

William F. Burnham

April 12, 2022
Date Decision Issued

William F. Burnham
Administrative Law Judge

WFB/at
#197673

PROPOSED ORDER

WHEREFORE, this 13th day of June, 2022, 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.

Lauren Lake

Lauren Lake
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION