IN THE MATTER OF THE CLAIM	*	**BEFORE JEROME WOODS, II,**
OF VITO SPITALERI,	*	**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 MICHAEL	*	
WHEATLEY, T/A SAFELOCK	*	**OAH No.: LABOR-HIC-02-21-03997**
PROPERTIES LLC,	*	**MHIC No.: 19 (05) 488**
RESPONDENT	*	

* * * * * * * * * * * * *

PROPOSED DECISION

STATEMENT OF THE CASE

On August 19, 2019, Vito Spitaleri (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department), for reimbursement of $13,081.00 in actual losses allegedly suffered as a result of a home improvement contract with Michael Wheatley, trading as Safelock Properties, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411

(2015).[1] On January 27, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a remote hearing on April 23, 2021, via the Webex videoconferencing platform. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Eric London, Assistant Attorney General, Department, represented the Fund. Willard Parker, Esquire represented the Claimant who was present.

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 4, 2021, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States mail to the Respondent's address on record with the OAH. COMAR 09.08.03.03A(2); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for April 23, 2021, at 9:30 a.m., via Webex, for which it listed a website and how to access Frequently Asked Questions regarding the Webex platform. The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

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. The OAH mailed, by regular and certified mail, a Notice of Remote Hearing (Notice) to the Respondent at his address of record with the MHIC on 213 Sandy Hill Road, Cambridge Maryland, 21613. COMAR 09.08.03.03A(2). The regular mailing and certified mailing sent to the Respondent was returned by the United States Postal Service (USPS) as undeliverable. The

[1] Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

Respondent made no request for postponement prior to the date of the hearing nor did he alert the MHIC or the OAH of any change to his address. COMAR 28.02.01.16. On April 1, 2021, the Fund emailed the Respondent at office@safelockproperties.com to exchange documents for the hearing, and included a copy of the Notice. The email did not return to the Fund as undeliverable. I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter

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 (2014 & Supp. 2020); COMAR 09.01.03; and 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 on the Fund's behalf:

FD. Ex. 1 Notice of Hearing, March 4, 2021

FD. Ex. 2 Hearing Order, January 20, 2021

FD. Ex. 3 Letter to whom it may concern, from MHIC, March 19, 2021

FD. Ex. 4 Home Improvement Claim Form, August 19, 2019

FD. Ex. 5 Letter to the Respondent from MHIC, August 30, 2019

I admitted the following exhibits on behalf of the Claimant:

CL Ex. 1 Contract (1 roofing contract), October 7, 2017

CL Ex. 2 Contract (2 paint/stain contract), October 7, 2017

CL Ex. 3 Deposit receipts, Number 1538 ($16,000.00) and 1531($13,581.00)

CL Ex. 4 Cashier's Check to Claimant with remitter to the Respondent, December 20, 2019, $4,617.01

CL Ex. 5 Email chain between the Claimant and Mr. Parker, October 5, 2018, October 6, 2018, October 31, 2018

CL Ex. 6 Check from the Claimant to the Respondent, October 7, 2017, $13,581.00

CL Ex. 7 Check from the Claimant to the Respondent, November 2, 2017, $16,000.00

The Respondent was not present to offer any exhibits.

Testimony

The Claimant testified and did not present other witnesses.

The Respondent was not present to offer testimony.

The Fund did not present testimony.

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.

2. On October 7, 2017, the Claimant and the Respondent entered into a contract (Contract) for $15,933.50 for the Respondent to remove an existing cedar roof and install a roof on the guest house on the premises at his home (Property) in Talbot County, Maryland.[2]

[2] The Respondent and the Claimant also entered into a contract regarding painting and staining buildings at the Property. That contract is not the subject matter for this case.

3. The Respondent's agent Brandon Collins, singed the Contract on behalf of the Respondent.

4. The Claimant paid the Respondent $5,331.00 on October 7, 2017 in order for the Respondent to begin work on the roofing project.

5. On November 2, 2017, the Claimant paid the Respondent $7,750.00 for completion of the roofing project.

6. The Claimant paid the Respondent a total of $13,081.00 ($7,750.00 plus $5,331.00) for the roofing project to be completed.

7. As of November 2, 2017, the Respondent had not performed any work on the roof.

8. The Respondent and his wife left Maryland in November 2019 to stay in Florida for the winter months.

9. The Claimant spoke with Mr. Collins numerous times in November 2017 and throughout the Spring of 2018 in order for the Respondent to complete the project.

10. Mr. Collins provided numerous excuses for why the project could not be completed, such as inclement weather and lack of supplies.

11. Mr. Collins stopped taking the Claimant's phone calls sometime in 2018.

12. Mr. Collins, acting on the Respondent's behalf, informed the Claimant in the fall of 2018 that the Respondent would return the money paid for the roofing project, but the money was not returned.

13. In December 2019, the Claimant obtained a garnishment from the Respondent, as a result of a judgement from the District Court of Maryland for Talbot County, in the amount of $4,617.01.

14. The Claimant's actual loss is $8,463.99 ($13,081.00 minus $4,617.01).

15. There is no barrier, such as familial or business relationship, that would prevent the Claimants from being reimbursed by the Fund.[3]

DISCUSSION

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2014); 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 Cty. 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); *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.

There is no dispute that the Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. I am also persuaded that the Respondent abandoned the project. The Claimant credibly testified that he paid $13,081.00 for the Respondent to work on the roofing project at his Property. The Respondent never performed work on the project and provided numerous, false, frivolous excuses for not doing the work. The Claimant's testimony, which was clear and detailed, was persuasive, supported by the

[3] *See* Bus. Reg. § 8-405(f)(1).

photographs of paid checks to the Respondent, and emails, and uncontradicted by any other evidence.

The Claimant was able to recover a garnishment from the Respondent for $4,617.01.

It was the Fund's position that the Claimant has proven his eligibility for an award from the Fund. I agree, and accordingly, I conclude that the Claimant suffered an actual loss as a result of the Respondent's misconduct.

The following formula appropriately measures the Claimant's actual loss: "If the contractor abandoned the contract without doing any work, the claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract." COMAR 09.08.03.03B(3)(a).

The Business Regulation Article caps a claimant's recovery at $20,000.00 for acts or omissions of one contractor, and provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss was the amount paid to the Respondent, which was less than $20,000.00, minus the amount received in garnishment ($13,081.00 minus $4,617.01). The Claimant's actual loss is $8,463.99.

Therefore, the Claimant is entitled to recover his actual loss of $8,463.99.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $8,463.99 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(a). I further conclude that the Claimant is entitled to recover that amount from the Fund. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $8,463.99; 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;[4] and

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

Jerome Woods II

July 15, 2021
Date Decision Issued

Jerome Woods, II
Administrative Law Judge

JW/cj
#193216

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

PROPOSED ORDER

WHEREFORE, this 13th day of October, 2021, 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.

Joseph Tunney

Joseph Tunney
Chairman
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION